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First Session, 39th Parliament

Official Report of Debates (Hansard)

Monday 23 February 2009

Standing Committee on Social Policy

Organization

Assemblée législative de l'Ontario

Première session, 39^e législature

Journal des débats (Hansard)

Lundi 23 février 2009

Comité permanent de la politique sociale

Organisation

Chair: Shafiq Qaadri Clerk: Katch Koch

Président : Shafiq Qaadri Greffier : Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Monday 23 February 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Lundi 23 février 2009

The committee met at 1431 in committee room 1.

APPOINTMENT OF SUBCOMMITTEE

The Chair (Mr. Shafiq Qaadri): Colleagues, we'll be able to begin the first part of our deliberations here, and then wait for members to show up.

Do I have a motion from the committee with regard to appointments? Mr. Ramal.

Mr. Khalil Ramal: I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or at the request of any member thereof, to consider and report to the committee on the business of the committee;

That the presence of all members of the subcommittee is necessary to constitute a meeting;

That the subcommittee be composed of the following members: the Chair as chair, Ms. Broten, Ms. DiNovo and Mrs. Witmer; and

That substituting be permitted on the subcommittee.

The Chair (Mr. Shafiq Qaadri): Thank you. Any discussion, comments? Seeing none, those in favour? Those opposed? The motion is carried.

That is the adjournment of the committee. I thank you for your esteemed presence.

The committee adjourned at 1433.

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Mr. Khalil Ramal (London-Fanshawe L)

Mr. Peter Shurman (Thornhill PC)

Mrs. Elizabeth Witmer (Kitchener-Waterloo PC)

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SP-22

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Legislative Assembly of Ontario

First Session, 39th Parliament

Official Report of Debates (Hansard)

Tuesday 3 March 2009

Standing Committee on Social Policy

Regulated Health Professions Amendment Act, 2009

Assemblée législative de l'Ontario

Première session, 39^e législature

Journal des débats (Hansard)

Mardi 3 mars 2009

Comité permanent de la politique sociale

Loi de 2009 modifiant la Loi sur les professions de la santé réglementées

Chair: Shafiq Qaadri Clerk: Katch Koch Président : Shafiq Qaadri Greffier : Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Tuesday 3 March 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Mardi 3 mars 2009

The committee met at 1601 in committee room 1.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, colleagues, as you know, we're the Standing Committee on Social Policy, convening here for Bill 141, An Act to amend the Regulated Health Professions Act, 1991.

SUBCOMMITTEE REPORT

The Chair (Mr. Shafiq Qaadri): The first order of business is to enter the subcommittee report, for which purpose I'll ask Mr. Ramal.

- Mr. Khalil Ramal: Your subcommittee on committee business met on Monday, February 23, 2009, to consider the method of proceeding on Bill 141, An Act to amend the Regulated Health Professions Act, 1991, and recommends the following:
- (1) That the committee meet for the purpose of holding public hearings in Toronto on Tuesday, March 3, 2009.
- (2) That the clerk of the committee advertise the information regarding the hearings in the Toronto Star.
- (3) That the clerk of the committee post the information regarding the hearings on the Ontario parliamentary channel and the Legislative Assembly website.
- (4) That interested people who wish to be considered to make an oral presentation on the bill should contact the clerk of the committee by Monday, March 2, 2009, at 12 noon.
- (5) That the deadline for written submissions be Tuesday, March 3, 2009, at 5 p.m.
- (6) That amendments to the bill be filed with the clerk of the committee by Thursday, March 5, 2009, at 5 p.m. for administrative purpose.
- (7) That if a selection process is required, the clerk of the committee provide a list of all interested presenters to the subcommittee following the deadline for requests.
- (8) That the length of presentations for witnesses be 20 minutes for groups and 10 minutes for individuals.
- (9) That the committee meet on Tuesday, March 10, 2009, for clause-by-clause consideration of the bill.
- (10) That the clerk of the committee, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements to facilitate the committee's proceedings.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Ramal. Are there any questions or comments on this subcommittee report before its adoption? No.

All in favour of the subcommittee report as read? Those opposed? The subcommittee report is duly entered.

REGULATED HEALTH PROFESSIONS AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT LA LOI SUR LES PROFESSIONS DE LA SANTÉ RÉGLEMENTÉES

Consideration of Bill 141, An Act to amend the Regulated Health Professions Act, 1991 / Projet de loi 141, Loi modifiant la Loi de 1991 sur les professions de la santé réglementées.

The Chair (Mr. Shafiq Qaadri): We'll now move to our presenters. We have our first presenter. I'll just remind, collectively, our group: We'll have 20 minutes per association, and 10 minutes for individuals. I understand that we have one cancellation and therefore may be able to move expeditiously.

ONTARIO MEDICAL ASSOCIATION

The Chair (Mr. Shafiq Qaadri): We'll move to our first presenters, on behalf of the OMA, the Ontario Medical Association. I'm just reminding you that you have 20 minutes to make your combined presentation, and any time remaining will be distributed evenly amongst the parties for questions and comments. Please begin, and please identify yourselves as well.

Dr. Ken Arnold: Thank you. I'm Ken Arnold. I'm the president of the Ontario Medical Association, and I'm a

family physician in Thunder Bay.

I'd like to start by thanking the government for referring Bill 141 to committee for consultation and to make changes where necessary. Although the bill is only comprised of a single clause, it is a very important clause when it comes to regulatory fairness. Although the bill would affect all regulated professions, my comments will focus on how it will impact physicians.

The OMA is not here to speak against Bill 141, but without changes, we can't support it going forward. We believe that this bill is overly broad in its wording and needs some clarification and limitations. In addition, we think that attention must be paid to the potential impact

that regulations made under this power might have on patients.

As you know, this bill proposes to give the college the authority to write regulations that will allow college inspectors to observe a physician in his or her practice, including the observation of procedures that are conducted by the physician.

The OMA notes that the amendment proposed in Bill 141 is much broader than other powers granted to colleges under the procedural code. Most of the powers under the Regulated Health Professions Act have explicit purposes and limitations attached to them. This helps everyone to understand the exact nature of the powers conferred to the college or its inspectors, and the purposes for which they're intended. Bill 141 is silent about what would cause a college to determine that it will observe a member's practice. A decision to observe practice is significant. We know from experience that even records-based peer reviews are stressful for physicians and can involve disruption of the practice. This will be even more pronounced with observational inspections, since they will, by nature, generally be carried out in the presence of patients.

The OMA believes that a few key amendments to Bill 141 could mitigate against the perception of intrusion and unfairness, including: a clear trigger. We believe the registrar should believe, on reasonable and probable grounds, that the conduct of the member exposes, or is likely to expose, his or her patients to harm or injury, and that the investigator should be appointed for an observational inspection.

We need notice. The member should be given reasonable notice that the college wishes to undertake an observational inspection, and such inspections should be scheduled at a time that takes into account the physician's customary practice routine.

There should be a clear purpose. The college should identify to the member the types of procedures that it specifically wishes to observe by means of its observational inspection.

There should be a focus on risky procedures. The degree of intrusion inherent in an observational inspection should be reserved for clinical activities that involve a reasonable degree of risk. There are existing quality assurance mechanisms to deal with things like communications skills etc., and this mechanism should be limited to circumstances where no other college power is adequate for the purpose.

We need a focus on out-of-hospital procedures. This proposed mechanism is unnecessary in hospitals, since hospital bylaws have for many years allowed the chief of medical staff or designate to observe any member of the medical staff undertaking a therapeutic action, operation or procedure.

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We have to consider patient privacy. Patients should have the opportunity to ask that delivery of their clinical care not be observed by an inspector. This is especially important if Bill 141 is not narrowed to deal exclusively

with procedures and more sensitive matters, like psychotherapy, might be subject to observation.

In summary, the OMA asks that you, as a committee, recommend to your colleagues in the Legislature that Bill 141 be amended to put clear limitations on the regulation-making powers of the colleges. These limitations should ensure that the new powers are exercised only where needed and in a manner that respects both the professional being reviewed and the patients being treated. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Dr. Arnold. Are you now available for questions, then?

Dr. Ken Arnold: I am.

The Chair (Mr. Shafiq Qaadri): We'll offer it now to the Conservative side—about four minutes or so per side. Mrs. Witmer.

Mrs. Elizabeth Witmer: Thank you very much, Dr. Arnold. You certainly do, I believe, make some very legitimate points. I'm just wondering, did you have an opportunity to provide your input to the government prior to the drafting of this bill?

Dr. Ken Arnold: No, we did not.

Mrs. Elizabeth Witmer: Okay. So the reason it wouldn't be here is because you weren't able to give advice or weren't asked for advice?

Dr. Ken Arnold: That's correct.

Mrs. Elizabeth Witmer: I would share your concern, I guess, from a patient perspective. I'm not sure that I might want to be observed, and I think that patient privacy needs to be taken into consideration. As you've already indicated, hospital procedures do cover the need—that we don't go there.

The purpose: What kinds of purposes do you think the college should identify to the member? What should be there? What should be in an amendment?

Dr. Ken Arnold: You're asking what information the college should give, what should trigger the—

Mrs. Elizabeth Witmer: That's right. What should trigger this happening?

Dr. Ken Arnold: I think the college does receive complaints, of course, frequently about the conduct of physicians in their offices. Obviously, as a result of that they may feel that they need—paper can only document so much. Obviously, there may be situations where they feel they need to observe, just as happens in hospitals currently.

I think there has to be a fair degree of suspicion, of concern, that the patients are at risk. That's certainly what we would be looking for.

Mrs. Elizabeth Witmer: Can you think of any example?

Dr. Ken Arnold: Obviously, this has come around because of the cosmetic surgery process.

Mrs. Elizabeth Witmer: That's right. That's what has prompted this; yes.

Dr. Ken Arnold: And the skills and training of some of those physicians are unclear. The college could perhaps speak to this, but it may be that those are the situ-

ations where the training is unclear that they would like to observe.

There isn't a Royal College of Physicians and Surgeons of Canada specialty of cosmetic surgery, so some of this has developed with shorter courses that take place sometimes out of this country, where physicians learn the skills they use in the office.

Mrs. Elizabeth Witmer: Did you have any suggestions at all as to these concerns that you've articulated here and the suggestion that some amendments be made to the bill? Have you written amendments as to how it could be worded at all, or have you simply identified the areas where there's a need for some clarification?

Dr. Ken Arnold: I think we're identifying the areas, and I'm sure the committee will have the wisdom-

Mrs. Elizabeth Witmer: To draft.

Dr. Ken Arnold: —to draft. They will understand, and certainly we'll be happy to give further input, should you require it.

May I introduce Ms. LeBlanc, executive director of health policy from the Ontario Medical Association?

Ms. Barb LeBlanc: Thank you. Given that this is only the regulatory enabling clause, we felt that just indicating the issues that need to be there—the trigger, the purpose—would be sufficient at this stage, and then, when the colleges begin to do their own regulatory drafting, those details would be fleshed out then.

Mrs. Elizabeth Witmer: Okay. So you're not saying that all of these amendments should be made to Bill 141?

Ms. Barb LeBlanc: What we're saying is that these issues should be identified in Bill 141 as parameters for the college regulation-making authority.

Mrs. Elizabeth Witmer: Okay. I understand now.

The Chair (Mr. Shafiq Qaadri): To Madam Gélinas. M^{me} France Gélinas: It's a pleasure to see you, Dr. Arnold. Thank you for coming down.

Dr. Ken Arnold: Nice to see you again.

M^{me} France Gélinas: I will continue on what you just said to Mrs. Witmer and then I have other questions. I was under the impression that you wanted clauses added to the bill to reflect those six points, but is what you're saying that you would be satisfied with a statement in the bill that says that those six parameters should be addressed in the regulations that will follow? I don't want to put words in your mouth, but did I understand that right?

Ms. Barb LeBlanc: What I'm trying to say, perhaps unclearly, is that we think Bill 141 itself should specify the limits on the colleges' regulation-making authority and that the things we've outlined here—a trigger, reasonable and probable grounds, notice—would be included as the factors that the college must act within.

M^{me} France Gélinas: All right. So we could add a statement to the bill that makes reference to the six specific parameters that you've outlined and then, once the colleges—as you said, because it's not only for physicians—work out their regulations, then those would be fleshed out. Okay; I didn't understand it that way the first time, but that's fine.

I was most perturbed by the statement you made at the beginning that you cannot support it going forward as it is, but you would be comfortable with supporting it once we would have added the six parameters that would set limits to the bill. Here, again, I'm looking for a yes or a

Dr. Ken Arnold: We couldn't support it as it is, but with those corrections we would be happy to. We're not going to speak against it, but we certainly would not be

happy supporting it without those provisions.

M^{me} France Gélinas: Okay. You did say that part of the reason why you could not support it is because of its impact on patients. Certainly you made clear the impact on physicians and the members that you represent. The impact on patients, I guess, is mainly targeted as patient privacy and the rights of patients to refuse, or did you have something else in mind when you made that statement?

Dr. Ken Arnold: I think that's the primary thing. As well, part of the mystique and magic of medicine is the patient's trust in the physician, and that would definitely be eroded if there was an inspector sitting in the corner as the physician-patient interaction took place. The patient would be questioning why the observer was there, and I think that would definitely interfere—it would certainly not be a normal physician-patient interaction.

M^{me} France Gélinas: One of the parameters that you would like set as a limit is the one that has to do with a clean trigger. I just want to go a little bit deeper in this. You mentioned that a patient making a complaint to the college could be identified as a trigger. Talking more specifically about cosmetic surgery and training, you did mention that there is no royal college of cosmetic surgeons. Would you see as acceptable for observationlet's say we do have a complaint against one physician, but then the college realizes that there are other physicians doing the same type of work. If we take, again, cosmetic surgery, a client might have a complaint against one physician, a family physician who practises cosmetic surgery. Would you see it, then, as a trigger for the college to go to other family physicians who practise cosmetic surgery, or did you have it more like one complaint, one trigger?

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Dr. Ken Arnold: Well, absolutely that a specific incident would trigger an observation of that particular physician. There would be no generalization so that any physician carrying a procedure would be eligible for observation-

The Chair (Mr. Shafiq Qaadri): Thank you, Dr. Arnold. Thank you, Madame Gélinas. I now offer it to the government side. Mr. Ramal.

Mr. Khalil Ramal: Thank you very much for your presentation. I just have a quick question: How many members of your association perform cosmetic surgery? Or a percentage, if that's possible?

Dr. Ken Arnold: I don't know; a small number. Actually, in fairness, many physicians deal in their offices with warts or moles that look a little funny. They don't set themselves up as practising cosmetic surgery, but nevertheless, many physicians have a small amount of that in their practice. Those who are practising cosmetic surgery as their major practice, I can't give you that number; sorry.

Ms. Barb LeBlanc: I think the other thing that's important to realize is that some plastic surgeons, who are fully trained and accredited, do cosmetic surgery as part

of their plastic surgery practice.

Dr. Ken Arnold: They are very adequately trained. The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon.

Mr. Bas Balkissoon: Thank you very much for being here. I just want to clarify: I did hear you say that you would like us to put that particular trigger mechanism in the act itself, and you're prepared to work with the College of Physicians and Surgeons of Ontario in terms of the regulations, to get into more specifics. My concern there is that if we put the wording as you've got it here, or even similar, we're restricting ourselves, that if there's another incident of some other nature in the future, we'll have to come back and amend the act again. Could you explain to me how we could make sure that we also provide opportunity for the future?

Dr. Ken Arnold: I'm not sure that I can do that. I think that this is such a groundbreaking change in the way regulations are carried forward, we have to think very carefully about the wording in this amendment. It's never—I mean, this is such a big change for a lot of—

Mr. Bas Balkissoon: I ask the question too because the medical field is ever-changing today, compared to 20 years ago.

Dr. Ken Arnold: I'm glad to say it is, and it will be a lot changed in 20 years' time—for my benefit, I hope.

So I'm not sure that I can answer that. I mean, we can speculate as much as we want, but of course the reason we're here today is because somebody didn't see a necessity for this when the original act was written.

Mr. Bas Balkissoon: So then am I clear to hear you say that you are prepared to work with the college when the regulations are being developed, to give your input into their process?

Dr. Ken Arnold: I think we'd always be willing to do that.

Mr. Bas Balkissoon: Thank you very much.

The Chair (Mr. Shafiq Qaadri): On behalf of the committee, I'd like to thank you for your presence as well as your written deputation from the Ontario Medical Association: Dr. Arnold, president; Ms. LeBlanc, executive director of health policy; and entourage.

STAN GORE

The Chair (Mr. Shafiq Qaadri): We now move to our next presenter. We have one cancellation, as indicated earlier, and if Dr. Stan Gore is present, then we'll move you up and you're most welcome to come forward.

Dr. Gore, I understand you have given us a written submission. I'll just remind you that as you are presenting in your private capacity as an individual, you'll have 10 minutes in which to make your combined presentation. I'll invite you to begin that officially now.

Dr. Stan Gore: Thank you. My capacity is that of a general practitioner who, until very recently, has been practising cosmetic surgery in Toronto. My comments now are limited to the impact of the bill on members of the college and their patients.

At present, Bill 141 gives the college the unfettered right to observe its members when they are treating patients and performing procedures. It's my firm belief that it is necessary to balance the concerns for public safety with the rights of the member being investigated and the rights of the patient being treated. The issues then become, in what circumstances is it appropriate for a member to be observed performing a procedure, and what procedural safeguards should be incorporated into the legislation?

First of all, circumstances which should trigger an observational component, in my opinion: The physical presence of an investigator during a therapeutic interaction between physician and patient has serious implications. Because of that, I believe there should be a threshold for triggering such an intrusive inspection. The justification for observing a member treat or perform a procedure on a patient is uncertainty about the member's competence and concerns about the patient's safety. I, therefore, suggest that the threshold be when the registrar believes on reasonable and probable grounds that the conduct of the member exposes or is likely to expose his or her patients to harm or injury.

There should also be a logical and predictable path for an investigation, of which competency/safety are the foci and observation is the component. Now, that path currently exists, but it's optional, at the discretion of the registrar rather than compulsory. When the college is concerned about a member's competence, it has two very distinct options open to it. It can trigger either a quality assurance assessment or a section 75 investigation.

Let's look at the quality assurance path. The college has specifically established the quality assurance route for the purpose of assessing and upgrading the skills and training of a member. The assessment made under this program is carried out over the course of a number of days, primarily in a university setting at McMaster, by trained medical educators. The results of the assessment and the recommendations are transmitted to the college. Those recommendations are usually in the form of educational upgrading; however, if the quality assurance committee feels that the member is incompetent, it can request the registrar to launch a section 75 investigation on that basis. In general, the tenor of the quality assurance assessment is the support and education of the member physician. The quality assurance assessment is the logical and appropriate place for an observational component of a doctor's practice because, firstly, it's performed by experts in professional assessment and, secondly, it's performed for legitimate, targeted reasons—competence and safety.

Let's look at the second path, the section 75 path, which is where the current observation component in the

bill seems to lie. This can be launched by the registrar on reasonable and probable grounds that the member has conducted an act of professional misconduct or is incompetent. It can be related to any form of impropriety, from narcotic dealing, sexual abuse or criminal conviction, to a complaint of any nature by a patient. It is wideranging. It includes inspection of the physical plant of the doctor, seizure of medical records, computer files etc.

There are two problems with incorporating an observational component into this section 75 investigation. First, at best, it's totally irrelevant in cases of professional misconduct, unless that professional misconduct involves the safety of a patient. It would be irrelevant to investigate how a doctor treats a patient if the doctor is charged, for instance, with—well, I'm trying to think of something silly, but basically something not related to safety or competency. At worst, this can be used in the form of a fishing expedition to find something unrelated to the alleged misconduct being investigated.

But more important, a regulatory body, such as the college, is not itself competent to make a determination of physician competence. The college is a registering body, not an educational or certifying body. It does not possess the standardized assessment tools of an educational institution, nor the experienced assessment staff, nor the assessment protocols.

Instead, it relies on the opinion of one or more ad hoc appointed experts who read the patients' charts and then observe the member for a few hours in an adversarial environment. Appointing one or two medical practitioners, particularly those who are not educators, to observe and make a critical assessment can only lead to conclusions which are unstandardized, arbitrary, inconclusive and possibly invalid and, if the assessors are also business competitors of the physician being assessed, the appearance of bias also exists.

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Therefore, in my opinion, a section 75 investigation should not be a legitimate path for assessing competence and consequently should not afford the registrar the ability to order an observational component, with two specific exceptions: Firstly, when the registrar believes on reasonable and probable grounds that the member has committed an act of professional misconduct which exposes or is likely to expose his patients to harm or injury; secondly, following a quality assurance assessment, after which the quality assurance committee recommends that the registrar initiate a section 75 investigation based on incompetence. These should be the only two occasions in which an observational component is included in a section 75 investigation.

Now let's look at procedural safeguards for an observational component in the course of a section 75. They are particularly important because investigations launched under section 75 are adversarial in nature, they bear the presumption of guilt rather than innocence and have very serious consequences for the party under investigation—namely, a public discipline hearing. Regardless of the outcome of the hearing, the media attention and the

innuendo are invariably devastating to the reputation of the doctor.

The first safeguard I recommend revolves around the medical investigators themselves. They not only must be unbiased, they must appear not to be biased. This entails appointing investigators who, firstly, have not demonstrated antagonism to the member or to the group of which the member is a part and, secondly, who are not business competitors or have other interests adverse to the member under investigation. In short, the investigators/observers should most likely be university-based practitioners from a separate geographic area.

Secondly, the appearance of fairness: The member being observed in the course of a section 75 investigation should have the right to a video recording of the proceedings, simultaneously be able to appoint the same number of experts as does the college, and have legal counsel present. Otherwise, it is possible that a hostile or biased investigator could arbitrarily decide that the doctor is incompetent and the doctor would have little or no recourse.

Thirdly, the scope of the assessment: The term "observation" must be defined. Does it include silent observation or may the investigator ask questions, and then of whom? Of the practitioner, his staff, the patient, and just during the observation or afterwards as well? What's the scope of the questioning? Can it be limited just to questions about the procedure or, at the other extreme, is it the equivalent of a specialty oral exam in the field?

Next, the procedural consequences of the assessment: whether or how admissions made during the assessment can be used in further proceedings against the member. There is always a right against self-incrimination accorded to the person under investigation in an adversarial setting.

The Chair (Mr. Shafiq Qaadri): Dr. Gore, just to let you know you have about a minute left.

Dr. Stan Gore: That right is protected during a quality assurance assessment. It must be protected during a section 75 investigation.

Finally, privacy rights of the patient: This is paramount and it extends beyond the period of observation. Should a discipline hearing be held as a result of the investigation, the patients involved can be called as witnesses by either the doctor or the college. This is a further invasion of privacy, forcing the patient, who has no complaint against the treating doctor, to testify publicly about a very private matter.

I can't talk any further because my time's up, but I've included in my written presentation two other things: firstly, a few practical scenarios of what it would be like to both be the doctor and be the patient involved in such an observational episode; and secondly, an actual case study that reflects the potential and the actuality of bias that can exist and that probably will exist—

The Chair (Mr. Shafiq Qaadri): Thank you, Dr. Gore, for your presence as well as your written deputation.

Dr. Stan Gore: Thank you.

The Chair (Mr. Shafiq Qaadri): We do appreciate receiving the written comments, which I'm sure the committee will have a look at formally.

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

The Chair (Mr. Shafiq Qaadri): We'll now invite our final presenters of the day.

Before we do so, I'd just alert the committee that we do have a number of written submissions, so each and every one of you received those from the Canadian Medical Protective Association, the Registered Nurses' Association of Ontario, who were actually scheduled, originally, to be here in person, as well as the College of Nurses of Ontario and others.

With that, I would now invite representatives of the CPSO, College of Physicians and Surgeons of Ontario, to please come forward.

As you've seen, the protocol, you have 20 minutes in which to make your presentations. Any time remaining will be distributed amongst the parties for questions. I'd invite you to please (a) be seated, and (b) introduce yourselves as you speak, for Hansard recording purposes. With that, I would now invite you to begin.

Dr. Jack Mandel: Thank you for this opportunity to appear before the committee. I am Jack Mandel, vice-president of the college and a family physician in Toronto for the past 35 years. With me are Patrick McNamara, the medical director of investigations and resolutions; Lisa Spiegel, counsel; and Louise Verity, director of policy and communications.

Bill 141 is of particular interest to the college as we continue to be concerned about patient safety in unregulated facilities. We have been advocating for legislative change to help address this gap in regulatory oversight.

While the college supports the bill, we wish to be very clear that as it currently stands, and unamended, the people of Ontario will continue to be at risk.

In today's presentation we will explain briefly why the legislative change contained in Bill 141 is an important first step. We will also explain how the bill can be improved to provide even greater protection for patients.

Of course, the provision of health care services has evolved and will continue to evolve. Today, an increasing number of procedures previously performed only in hospitals are taking place in unregulated settings. Accountability systems have not kept up with these changes. The number of procedures performed outside of hospitals is increasing. Such procedures include eye surgeries, obesity surgeries, colonoscopies and gastroscopies. This bill would allow the college to make regulations to inspect such facilities through, among other tools, direct observation of physicians in their practice setting.

While providing the mechanism for the college to implement a thorough facilities inspection regime is a much-needed amendment, the government needs to ensure that equal protection of the public is available wherever a patient is treated, through clarification of the college's investigatory powers. These are the powers utilized by investigators to evaluate a physician's competence, and include both observing and interviewing.

For over a year, many significant college investigations have been put on hold due to legal challenges to the college's investigatory powers. These include investigations into general practitioners performing invasive cosmetic surgical procedures and investigations that arose after patients died.

These challenges question our statutory authority to investigate using tools like interviewing, which we use in most clinical investigations. They also challenge our authority to observe physicians, which we undertake in a limited number of cases where observation is necessary for a complete and meaningful investigation. Observation may be necessary to evaluate the surgical skill of a general practitioner who has not undertaken a formal surgical residency program.

Thus far, the court has agreed with the college that the current wording in section 76 of the Health Professions Procedural Code empowers the college investigators to observe physicians during investigations. The Divisional Court has stated that "observation is particularly important in the case of surgery, where the practice is predominately a manual one ... the observation of surgical practice is an important tool to assess a physician's skill and competence, as well as his or her ability to deal with complications."

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Other interpretation issues remain outstanding. We are still involved in litigation through appeals and other court proceedings. The end of this litigation is many months, if not years, away. These delays will make it possible for some practitioners to continue to practise in areas in which the college has been unable to ascertain whether they have the requisite knowledge and skill to do so. While these issues are before the court, it is possible for physicians who are involved in this litigation to continue practising surgery. Those who are unqualified would pose a significant risk to public safety.

Until the litigation is complete, these significant investigations remain incomplete. The litigation has also had an impact on the tenor of our investigations, as some physicians under investigation have been less than cooperative with the college's investigative process. As a result, the college may be unable to fulfill its mandate to protect the public, with significantly delayed investigations and lengthy, drawn-out challenges to the core of its investigatory regime. This is why we are seeking clarity of our investigatory powers.

We have looked at the investigatory powers of other regulators. In Ontario, for example, veterinarians under Ontario's Veterinarians Act are required to participate in interviews with their college's investigators. The act also provides, in clear language, the member's duty to cooperate.

We believe that the powers of investigation in the practice of medicine should be at least as effective or as clear as the practice of veterinary medicine. Regulatory oversight of health services for the people of Ontario should be at least as effective as, if not more so than, the oversight of health services for dogs and cats.

Why is the power to interview during the investigation so important? When looking into a doctor's practice, the college retains physician investigators to provide opinions as to whether the physician's practice meets the standards of the profession or is competent. Incompetence is defined in the code as that a physician's care displays a lack of knowledge, skill or judgment or disregard for the welfare of the patient, and whether the physician's practice, behaviour or conduct exposes or is likely to expose patients to harm or injury.

To answer these questions meaningfully, physician investigators often need to meet with and interview the physician under investigation. Without an interview, the physician investigator must rely predominantly on a review of medical records to answer the questions before him. The chart tells only one part of the story; the remainder needs to come from an explanation from the physician. Whether care is simply poorly charted or is in fact poorly provided can often only be told from an interview.

We believe that, in addition to what is contained in the bill, amendments to the Health Professions Procedural Code are urgently needed to confirm our interpretation that college investigators are empowered to interview physicians. We are proposing an amendment that is consistent with the powers of investigators under Ontario's Veterinarians Act.

Thank you very much for this opportunity to make this submission to the committee. We look forward to working with you to enhance public safety in Ontario, and are pleased to answer any questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Dr. Mandel. We'll now move to the NDP side—about four or so per side. Please begin.

M^{me} Erance Cálinas

M^{me} France Gélinas: Pleased to meet you, and thank you for coming. I was curious to find out: What events or what series of events would trigger an observation by the college?

Ms. Lisa Spiegel: Are you referring to the proposed amendment presented?

M^{me} France Gélinas: No. I'm referring to the bill in general. You were there when the OMA presented, and they felt that they wanted a clear trigger that would then bring the college to do an observation.

Ms. Lisa Spiegel: In the discussion today, there's been a bit of confusion between an investigatory power and this bill, which deals with amendments to the college's regulatory-making powers. The regulatory-making powers that we're talking about that are proposed in this current bill deal with the power to make regulations that deal with inspections of out-of-hospital facilities. One of the tools that the college would seek to implement, if this bill is passed, is observing in these inspections of out-of-hospital facilities, so that's separate and apart from the college's investigatory powers.

The types of triggers that the college has envisioned—the regulation is in the process of being drafted, but it would be triggered by a particular procedure that's performed. Right now there are a number of procedures in the province that are performed in facilities that simply have no regulatory oversight or minimal regulatory oversight. So the college has envisioned that certain procedures would trigger the inspection and that, where appropriate, an observation of those procedures may be undertaken as a tool to inspect.

M^{me} France Gélinas: Okay. I appreciate you writing down the two recommendations that you would like us to add to Bill 141. I guess it's my ignorance, but do you mean to say that if you ask questions, the physicians don't have to participate in the interview as it is now, or

they're challenging that?

Ms. Lisa Spiegel: The college's position is that physicians do have an obligation to respond to questions and that the college has the power to ask those questions, but that power is being challenged by various physicians, which has led to delays in investigation and the college being tied up in court for over a year. The question of whether section 76 of the code allows us to interview a physician—the college maintains it's there; we are being challenged as to that power, and that's why we seek clarity through the amendment that we propose.

M^{me} France Gélinas: I guess the same goes with cooperation. I must be naive, but I expected that if my college asked me a question, I would answer really

quickly.

Ms. Lisa Spiegel: If you're a lawyer, you'd have that obligation. We say that doctors have that obligation too, but that has been challenged, yes.

The Chair (Mr. Shafiq Qaadri): To the government side

Mr. Bas Balkissoon: Thank you very much for being here. I just wondered if you could comment on the previous deputant's statement to the regard that maybe the college is not the right body to judge someone's competence, but it should be in a university setting.

Dr. Patrick McNamara: I would say that the college is responsible for the competence of physicians throughout their entire career, from their initial registration with us and their qualifications to their independent practice, through the whole course of their career. Competence doesn't stop the day you register with the college and begin your practice. We have a responsibility to ensure that patients are safe through the entire course of their career. There are many physicians who practise, and we're talking particularly today, in unregulated facilities that are not subject to the academic strictures that one would see in a teaching hospital or in a university setting, and I think it's very important for us to ensure that that level of competence is always there.

Mr. Bas Balkissoon: So you would say that your people who are doing the investigations and inspections are quite capable of doing this?

Dr. Patrick McNamara: Yes. As Dr. Mandel mentioned in his presentation, we retain outside physicians who are expert, who are qualified in the same area in

which the physician is under investigation. We do take care to try and ensure that there is no bias or perceived bias; that's an important point for us. But the college's inspector is an outside practising physician who is eminently qualified in the area in which they are being asked to opine.

Mr. Bas Balkissoon: Can you tell us what the CPSO has done in terms of patient safety since the couple of incidents with cosmetic surgery in terms of improving patient safety?

Dr. Patrick McNamara: I can't speak specifically to any ongoing investigation because of the confidentiality requirements of the RHPA, but I can say that we have surveyed all of the practising physicians in the province of Ontario with a mandatory questionnaire to determine whether or not they are practising cosmetic procedures. There are a number of those physicians currently who are the subject of an investigation at the present time to determine whether or not they are competent to perform those procedures. As Ms. Spiegel has said, unfortunately some of those investigations are now held up by legal proceedings.

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Mr. Bas Balkissoon: Can I get your comment with regard to the previous two deputants, in terms of that they would like to see us strengthen the act in terms of making a statement with regard to what would trigger an investigation? How would you recommend that we deal with that?

Ms. Lisa Spiegel: I'm sorry. Can you repeat the question?

Mr. Bas Balkissoon: The previous two deputants both suggested that, in the act itself, we should clarify the triggering mechanisms that would cause the CPSO to do an investigation.

Ms. Lisa Spiegel: Again, there might be a talking at cross-purposes. I understood that Dr. Gore's presentation dealt with the power of the college to investigate under section 75 of the code. The triggers are there, under 75(a), (b) and (c) of the code. There might be a complaint that comes into the college; there might be information from the quality assurance department of the college that suggests a member is incompetent; or there might be information that comes from a coroner or a hospital that would lead the college to launch an investigation if certain statutory preconditions are satisfied, like the registrar having reasonable and probable grounds to believe a member has committed an act of professional misconduct or is incompetent, and the executive committee approving of an appointment of investigators. Those are the current, existing triggers for investigations. But as I mentioned earlier, what would trigger an inspection, under a regulation that has not yet been passed, of an out-of-hospital facility, that's-

The Chair (Mr. Shafiq Qaadri): I'll need to intervene there. Thank you, Mr. Balkissoon. To Ms. Witmer.

Mrs. Elizabeth Witmer: Thank you very much for your presentation and thank you so much for the copy of the amendment. That's always appreciated.

I just want to ask a couple of questions. You maybe partially responded to Mr. Balkissoon, but what types of procedures are involved in the litigation that you are having with some of your members, and why is the public being put at risk?

Ms. Lisa Spiegel: I'm thinking. The types of procedures that are being performed by the physicians who are currently engaged in litigation are all cosmetic procedures. They are surgical procedures, ranging from abdominoplasty to liposuction, and run the gamut of various cosmetic surgical procedures. The college may be being put at risk because we're unable to complete investigations, and without a complete investigation we don't know whether the member has committed an act of professional misconduct or is incompetent.

Mrs. Elizabeth Witmer: So, if you don't know, then you're suggesting these amendments that you believe would protect the public. Do you believe, then, that if these amendments are made, you could ensure that the public is protected?

Ms. Lisa Spiegel: These amendments would enable us, hopefully, to have an investigatory regime that isn't challenged, where members would comply with requests to be interviewed as they have in the past and are starting not to do going forward. That's our hope: that we could complete investigations in a thorough manner.

Mrs. Elizabeth Witmer: I guess you can never guarantee that the public is not put at risk, but certainly there would be a better chance that the investigations are as thorough as possible and that you are provided with all of the information that would be necessary.

Ms. Lisa Spiegel: That would be our hope.

Dr. Patrick McNamara: I think it's important to realize that these powers that we're asking for are not revolutionary. These are fundamental—

Mrs. Elizabeth Witmer: No, and I see that. They're pretty simple, and I think that most of us would assume that you would be provided with that—

Dr. Patrick McNamara: They are absolutely fundamental to the training and assessment of physicians through the course of their residency training and their teaching. These are done every day, day in and day out, where young residents are questioned and interviewed by their teachers. They're observed for thousands of hours in the operating room to come to a very robust decision about whether that individual is ready to proceed through their training into an independent practice.

Mrs. Elizabeth Witmer: Is this just recently that there has been this lack of co-operation?

Dr. Patrick McNamara: Heretofore, most physicians have been quite co-operative with us in terms of the interview. It's only recently that we're beginning to see challenges to that authority. Our use of the observational power is recent because we have recently realized, through our quality assurance processes, that this is an important aspect of assessing a physician's competence. It's been used for a number of years in our quality management division, and we feel that in terms of a competent and thorough investigation, it is also an important

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aspect of that, particularly when we're looking at surgical specialties, which we are in these particular cases.

Mrs. Elizabeth Witmer: So the type of procedures, then, that you're involved in primarily are the cosmetic surgeries.

Ms. Lisa Spiegel: With respect to this particular litigation that's going on now.

Mrs. Elizabeth Witmer: Yes. Okay.

Ms. Lisa Spiegel: But our investigations cover a wide range.

Mrs. Elizabeth Witmer: Exactly, but these are the ones where you're trying to introduce amendments in order to overcome some of the obstacles that you're encountering.

Dr. Patrick McNamara: And we're seeing now, in the last few years, as I'm sure you know, many procedures now being moved out of hospital into unregulat-

ed facilities that heretofore were done in an in-hospital setting. There's an explosion of out-of-hospital clinics and facilities where surgical procedures are now being performed, not just in the cosmetic area, but in many other areas: endoscopy, cataract—

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Witmer, and thank you, Doctors Mandel and McNamara and Ms. Spiegel and Ms. Verity, for your deputation and written submission on behalf of the College of Physicians and Surgeons of Ontario.

I'll just remind committee members that amendments are due for this bill on March 5, Thursday, at 5 p.m. Then we'll be having clause-by-clause consideration of the bill March 10.

Committee adjourned.

The committee adjourned at 1655.

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First Session, 39th Parliament

Official Report of Debates (Hansard)

Tuesday 10 March 2009

Standing Committee on Social Policy

Regulated Health Professions Amendment Act, 2009

Assemblée législative de l'Ontario

Première session, 39^e législature

Journal des débats (Hansard)

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Comité permanent de la politique sociale

Loi de 2009 modifiant la Loi sur les professions de la santé réglementées

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STANDING COMMITTEE ON SOCIAL POLICY

Tuesday 10 March 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Mardi 10 mars 2009

The committee met at 1533 in committee room 1.

REGULATED HEALTH PROFESSIONS AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT LA LOI SUR LES PROFESSIONS DE LA SANTÉ RÉGLEMENTÉES

Consideration of Bill 141, An Act to amend the Regulated Health Professions Act, 1991 / Projet de loi 141, Loi modifiant la Loi de 1991 sur les professions de la santé réglementées.

The Chair (Mr. Shafiq Qaadri): Colleagues, I welcome you to the Standing Committee on Social Policy. As you know, we're here for clause-by-clause consideration of Bill 141. We have, I think, a few clauses before the committee. I'll open the floor for any general comments, and then we'll move to the clause-by-clause consideration. Are there any general comments that any members would like to offer? Seeing none, the floor is now open, and we'll move to Mrs. Witmer.

Mrs. Elizabeth Witmer: Regarding section 0.1 of the bill, I move that the bill be amended by adding the following section:

"0.1 Section 76 of schedule 2 to the Regulated Health Professions Act, 1991 is amended by adding the following subsections:

"Reasonable inquiries

"(1.1) An investigator may make reasonable inquiries of any person, including the member who is the subject of the investigation, on matters relevant to the investigation."

"Member to co-operate

"(3.1) A member shall co-operate fully with an investigator."

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Witmer. As committee Chair, I'm advised that I need to rule on the admissibility of this particular amendment, which, as you know, proposes to amend a section of the schedule of a parent act that is not before the committee. I therefore, with regret, rule this motion out of order.

Mrs. Elizabeth Witmer: Having anticipated that, I ask for the committee's unanimous consent to consider this motion.

The Chair (Mr. Shafiq Qaadri): Ms. Witmer is seeking unanimous consent to consider this motion. Do

we have unanimous consent for the motion? Agreed. You have such consent, Ms. Witmer. Continue.

Mrs. Elizabeth Witmer: Thank you very much. What I think we're attempting to do is to be responsive to the college, which has encouraged that the bill be amended in order that we not put people in the province of Ontario at risk. This would clarify the college's investigatory powers. These are the powers utilized by investigators during investigations of physicians in response to concerns that were raised about physicians' practices by patients or other health colleagues. This was a very important amendment that had been brought forward by CPSO and that we're trying to include. Of course, the area that we were trying to focus on was the whole area of cosmetic surgery, where there have been some concerns expressed in the past about situations relating to patients who have died and investigations that have taken place.

The Chair (Mr. Shafiq Qaadri): Are there any questions or comments?

M^{me} France Gélinas: I listened with attention to the deputants who came in front of our committee. We could see that there were dissenting opinions. But when the college came forward and said that they could not get collaboration and co-operation from their members, that was a real shock for me. The college is there to protect the public, and that we have to pass a law that will mandate the members of the college to co-operate with their college is kind of a sad state of affairs.

This being said, I fully support it. If we need the legislative power for this to happen, then I will support it. I'm just really saddened that members of health colleges don't see it as their duty to collaborate with their college.

The Chair (Mr. Shafiq Qaadri): Are there any further questions or comments?

Mr. Bas Balkissoon: The bill was brought forward by the government as a result, as it was said before, of some problems with cosmetic surgery. We see the bill as improving patient safety and the health care system all together. The opposition has moved an amendment which the government will support. We think that overall it will help the college in executing its job as an investigator.

The Chair (Mr. Shafiq Qaadri): If there are no further questions or comments or queries, then we'll proceed to the vote. Those in favour of the PC motion before the floor? Those opposed? PC motion carried.

I'll now proceed to consider, with your permission, sections 1 to 3, inclusive, for which no amendments have been received. Those in favour? Carried.

Shall the title of the bill carry? Carried. Shall Bill 141, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

Is there any further business before this committee?

I appreciate how challenging committee meetings can be, but I thank you for your endurance. Committee adjourned.

The committee adjourned at 1539.





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Family Statute Law Amendment Act, 2009 Assemblée législative de l'Ontario

Première session, 39^e législature

Journal des débats (Hansard)

Lundi 23 mars 2009

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STANDING COMMITTEE ON SOCIAL POLICY

Monday 23 March 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Lundi 23 mars 2009

The committee met at 1432 in committee room 1.

SUBCOMMITTEE REPORT

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, colleagues, I'd like to welcome you to the Standing Committee on Social Policy for consideration of Bill 133, An Act to amend various Acts in relation to certain family law matters and to repeal the Domestic Violence Protection Act, 2000.

The first order of business is the entering into the record of the recent subcommittee report, for which purpose I'll call Mr. Zimmer.

- Mr. David Zimmer: Your subcommittee on committee business met on Tuesday, March 3, 2009, and Wednesday, March 4, 2009, to consider the method of proceeding on Bill 133, An Act to amend various Acts in relation to certain family law matters and to repeal the Domestic Violence Protection Act, 2000, and recommends the following:
- (1) That the committee meet for the purpose of holding public hearings on Monday, March 23 and Tuesday, March 24, 2009, in Toronto.
- (2) That the clerk of the committee, with the authority of the Chair, place an advertisement for one day about the public hearings in the major English and French newspapers across the province.
- (3) That the clerk of the committee post information regarding the hearings on the Ontario parliamentary channel and the Legislative Assembly website.
- (4) That interested people who wish to be considered to make an oral presentation on Bill 133 should contact the clerk of the committee by Tuesday, March 17, 2009, at 5 p.m.
- (5) That the clerk of the committee provide a list of all interested presenters to the subcommittee following the deadline for requests.
- (6) That the deadline for written submissions be Thursday, March 19, 2009, at 5 p.m.
- (7) That the research officer provide information on the following:
- —the proposed amendments to the Pension Benefits Act;
- —the backgrounder on the Domestic Violence Protection Act, 2000; and
 - —a summary of the recommendations.

(8) That clause-by-clause consideration of the bill be tentatively scheduled for Monday, March 30, 2009.

(9) That the clerk of the committee, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements to facilitate the committee's proceedings.

The Chair (Mr. Shafiq Qaadri): Are there any questions or comments or amendments to be suggested? Mr. Zimmer.

Mr. David Zimmer: Yes, Chair, I have—

Mr. Peter Kormos: I bet you Mr. Zimmer has three amendments.

Mr. David Zimmer: Chair, I have three amendments.

The Chair (Mr. Shafiq Qaadri): One per lawyer. Go ahead.

Mr. David Zimmer: Thank you, Chair. I move that paragraph 1 of the report of the subcommittee be amended by adding the date "Monday, March 30, 2009" for the purpose of public hearings.

The Chair (Mr. Shafiq Qaadri): Any further discussion?

Amendment carried as is? Carried.

Next amendment, Mr. Zimmer.

Mr. David Zimmer: I move that paragraph 8 of the report of the subcommittee be amended by striking out "Monday, March 30, 2009" and replacing it with "Monday, April 6, 2009" for clause-by-clause consideration of the bill.

The Chair (Mr. Shafiq Qaadri): Any questions, comments?

Carried as is? Carried.

Mr. Zimmer.

Mr. David Zimmer: I move that paragraph 8 of the report of the subcommittee be amended by adding the following:

"That the administrative deadline for filing amendments to the bill with the clerk of the committee be April 2, 2009, at 12 noon."

The Chair (Mr. Shafiq Qaadri): Any further questions, comments?

Carried as is? Carried.

Thank you, Mr. Zimmer, for the amendments. Thank you for reading the subcommittee report into the record.

Shall the subcommittee report, as amended, carry? Carried.

FAMILY STATUTE LAW AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT DES LOIS EN CE QUI CONCERNE LE DROIT DE LA FAMILLE

Consideration of Bill 133, An Act to amend various Acts in relation to certain family law matters and to repeal the Domestic Violence Protection Act, 2000 / Projet de loi 133, Loi modifiant diverses lois en ce qui concerne des questions de droit de la famille et abrogeant la Loi de 2000 sur la protection contre la violence familiale.

WOMEN'S CENTRE FOR SOCIAL JUSTICE

The Chair (Mr. Shafiq Qaadri): We'll now move to our order of business, inviting our first presenter of the day, Nneka MacGregor, the executive director of the Women's Centre for Social Justice.

I invite you to please come forward and have a seat. Just to remind you and everyone else of the protocol, organizations will have 20 minutes in which to make their presentations; for individuals, it will be 15 minutes. You have 20, Ms. MacGregor, and any time remaining after your formal remarks will be distributed evenly amongst the parties for questions, comments and cross-examination. We now invite you to begin.

Ms. Nneka MacGregor: My name is Nneka MacGregor. I'm the executive director of the Women's Centre for Social Justice, also known as the Women at the Centre.

We're a unique organization that was developed by women survivors of gender-based violence for women survivors of gender-based violence and their families. I'm proud to say that we played a small role in getting these proposed amendments here today. My submission before you is being given in the hopes of giving context and adding depth, to help you understand why these changes are so crucial not just to the victims of domestic violence, but to society as a whole, as we work to eradicate violence and woman abuse.

On November 24, 2008, Michael Bryant, the Attorney General, as he then was, introduced Bill 133, which we believe contains a number of very important law reform initiatives that will help women transition on after the breakdown of intimate relationships.

We want you to know that we wholeheartedly support all the reforms outlined in Bill 133, but for want of time, we're going to focus on the reforms that we know have direct bearing on the safety and well-being of women and children who are victims of abuse.

We're pleased to note and support that Bill 133 introduces new interim order provisions to limit inappropriate behaviour by people involved in Family Court proceedings. We believe that when this is enacted, it would be of great benefit not just to the women whose partners use Family Court proceedings as an opportunity to engage in ongoing legal bullying, but to the system as

a whole in reducing the tremendous amount of financial and human resources spent annually in the disposition, or not, of these drawn-out proceedings.

We're also happy to note that Bill 133 introduces much-needed reforms relating to custody and access under the Children's Law Reform Act, in response to the 2008 murder of little Katelynn Sampson after custody had been awarded to a non-parent. As we saw, even though the custody order was made with the consent of Katelynn's mother, no due diligence was done to speak of to speak to the competence and suitability of Donna Irving and her common-law partner, Warren Johnson, before they were given guardianship of the child. The inclusion of something as simple as a police and child protection check will definitely go a long way to ensuring that sort of thing does not happen again. Taken together, these changes will increase the safety of children, particularly in those cases where non-parents are seeking custody.

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However, our focus here today is, in particular, on the amendments relating to restraining orders, because we know that for women leaving abusive relationships these restraining orders can sometimes mean the difference between living lives free or living lives with continued criminal harassment; living lives where they regain control or lives where their abusers use the system as an extension of his control over her. As we've seen too many times, restraining orders can mean the difference between life and death.

Over the years, we've spoken to many women like us to determine ways of making systems more responsive to the needs of women fleeing, or who have fled, abusive relationships. They or we are the experts—and I say this sincerely. We are the experts because we're the people with the lived experience and, therefore, best placed to inform the community and lawmakers on effective ways to keep women and children safe and hold abusers accountable for their actions.

I want to commend the Ministry of the Attorney General for the manner and extent of engagement with community stakeholders leading up to these proposed changes. We, the voices of the survivors, were included in the discussions, development and formulation of these amendments. For those reasons, we have before us changes which, if enacted into law and implemented, will go a long way to achieve these objectives.

I had said in my introduction that I wanted to provide context to these amendments. I will start by putting restraining orders in their social context. We cannot know whether any of you here have had personal experiences with restraining orders, whether directly or vicariously through family members, friends or neighbours, but in case you do not, we ask that you follow along, not through the lens of an abused woman but as concerned citizens who are willing to do your part.

I'm going to begin by putting this in three question buckets. The first is, we're going to ask ourselves, what's the purpose of restraining orders? Under that general question we're looking at, what's it for? And the "What's it for?" is not like asking the question to a first-year law student. It's really asking: What is it for when a woman who's experiencing violence goes and makes an application? What does she need it for, and what is she hoping this restraining order will do for her?

The second set of questions is around what the circumstances are. What's happening in her life at that particular point in time when she goes before a judge to get a restraining order? And what does she actually have

to do in order to get a restraining order?

Then the third set of questions I'm going to look at are: What are the consequences; i.e., what would happen if she doesn't get it and what would happen when she does get it?

I want you to think about what leads a woman to appear before a judge seeking an order that sets out the parameters under which her former partner shall be allowed to communicate with her and, often in cases where there are children involved, communicate with the children as well.

I want to say that the breakdown of any intimate relationship, no matter how long or how short its duration, is never easy. I want you to factor into that relationship when you have physical, financial, verbal and psychological abuse from one partner to the other; factor in feelings of fear for one's life or the lives of your children, fear that comes about from having your partner tell you that he will make you suffer or that he will kill you or your children. The question to you all is: What would you do, where would you go and how would you actually get the courage to do something about this?

I'm going to start with the purpose of restraining orders. For an abused woman, she sees this restraining order as a promise. For her, it's the justice system's promise to protect her. She needs it because it's the way for her to get the message across to her abuser that he is simply not allowed to interfere in her life anymore. What's more important is, this message is being delivered by somebody who has more power than him. It's a judge. She's hoping that, having been told, he will abide by the terms and conditions set out, thereby keeping her physically safe and free from continued abuse. We think that's quite a reasonable assumption.

What are the circumstances that lead an abused woman to seek such an order? We want you to understand what's going on in her life at that time. For some women, they become involved in the criminal justice system as their intimate partners may have been charged with offences against them under the Criminal Code. For many more, as they navigate the family law system increasingly as unrepresented participants, they're suffering from the trauma and stresses arising from their own lived experiences. This is compounded by the unenviable process of trying to find and retain a lawyer who understands issues of woman abuse, then add a layer where she has to recount and thereby relive her abuse with the real fear and possibility that she may not be believed.

I had mentioned the fact that we are seeing an increase in the number of women who are unrepresented in Family Court, so let's add on the nightmarish ordeal of finding out about filing and serving him with court papers. That's not an easy task, I can assure you, even for those with legal training, much less when you consider women for whom English and French are not their first language. Next, we'll add another layer to address her need to take care of the children, yet another layer to address the impact on her health, yet another to address the hours she has taken off work and to address the issue of the financial toll that it takes. Constantly underlying all of these is the real and immediate fear for her safety, and uncertainty about the system's ability to protect her from him.

So in answer to the question, "What does she have to do to get a restraining order?": simply a lot; too much. Recognize the fact that even under these new amendments, she will still have to travel with these layers; however, we're pleased to note that the process at least will be easier.

The third issue around the consequences really leads us to the crux of these proposed amendments, not merely in answering the question, "What happens when she gets the restraining order?" but in the broader framework of what would happen if these amendments are not passed. For that, we'll go to the amendments themselves.

Restraining orders are generally seen by abused women as a tool that can help keep them safe. After all, as I said before, it's a direct order from a judge, it addresses the scope and extent to which her abuser can interact with her, and, as a court order, any breach of its conditions would carry with it adverse consequences.

All that makes perfect sense until we look at the reality for the women. Women have been saying for years that under the present system the orders are not worth the paper that they're written on because they're either not being enforced or not enforced with any degree of consistency, allowing for the abuser to act with impunity, confident that he will not be brought to account for his breaches.

And breaches do occur constantly, as abusers take what we've been calling incremental liberties. Where there is a no-contact condition, he, his friends or his family will call her. Where it prohibits him from being near her home or workplace, he shows up. What does she do? What she's supposed to do: She calls the police. What do they do? What they're supposed to do: They file a report. But what happens after that is of really no consequence. What does he learn from that? Simply that he can breach a judge's order with no accountability. Only the next time, his actions become more bold and brazen, and, as we have seen from far too many inquests, he may end up killing her and her children, in breach of the conditions explicitly stated. By then, it's too late.

At the present time, a breach of a restraining order is punishable under the Provincial Offences Act, but this bill would make it an offence punishable under the Criminal Code, so that a man who breaches a restraining order could be arrested by the police, charged with a criminal offence and held for a criminal bail hearing. His case would then proceed in criminal court, and if he's found guilty, he would be liable to potentially more serious penalties. This sends a clear and decisive message to everybody that society as a whole will not tolerate such behaviour. It is not her responsibility to keep him away; it is the responsibility of law enforcement and the courts.

I put in an excerpt of section 127 of the Criminal

Code, which I'm not going to read for you.

We believe that this provision will go a long way to stemming those incremental liberties we referred to earlier. If you comply with the terms and conditions of the restraining order, you will not be in a position where section 127 applies to you. If however, without lawful excuse, you disobey, you're guilty of an indictable offence and liable to imprisonment.

This puts everyone on notice and explicitly informs of the consequences of a breach. It also gives women more confidence that the police will follow through on a reported breach and that the legal system will not tolerate the kinds of habitual abuses that abusive men have been able to get away with, to the detriment of women survivors and their children.

Bill 133 also requires restraining orders to be made "in the form prescribed by the rules of court." We know that by requiring a standard form order, it will make it more easily understood by women and will simplify enforcement by police and ensure a degree of consistency in interpretation and application across the province.

We're also happy to note that Bill 133 expands the category of people who can apply for a restraining order to include "a person other than a spouse or former spouse of the applicant" because this obviously addresses the issue where a woman, no matter how short-lived their cohabitation arrangement, can have access to the safety intended to be conferred by the restraining order.

We submit that the amendments under Bill 133 are very reasonable and actually common sense. They are not intended, nor are they drafted, to point fingers, apportion blame or punish any party, but merely seek to ensure safety for those who truly need it and ensure accountability by those who otherwise show that they are willing to be unaccountable.

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We end our submission by answering the age-old question: Why does she not just leave? The answer is to tell you that it is not so easy. It is a multi-layered situation, and fear of sustaining grievous bodily harm from him is ever-present. Women have been saying and research has shown, across the globe, that for many women the time up to and after separation is a time when she is at most risk of harm from her abuser. It is precisely at this time that restraining orders get served and, in many instances, ignite a rage she cannot contain alone. By implementing these proposed amendments, we'd be moving a long way in the right direction to keep her safe. Not to do so will simply perpetuate her suffering and is, quite frankly, allowing for a continuation of abuse.

The Chair (Mr. Shafiq Qaadri): Thank you. We have about two minutes per side, beginning with Mrs. Elliott.

Mrs. Christine Elliott: Thank you very much for your presentation. It certainly speaks to the need for further protection for victims of domestic violence.

I just had one question with respect to the Domestic Violence Protection Act and why that needs to be repealed in order for Bill 133 to replace it. It would seem to me that it's complementary rather than being in conflict with Bill 133, in that it also allows for emergency intervention orders. Did you consider that in the course of your deliberations?

Ms. Nneka MacGregor: We did, and at the end of the day, our issues were really around how practical and how implementable these issues are. We found the Bill 133 provisions were more realistic and more readily available to be applied. So for us it was about implementation and application.

The Chair (Mr. Shafiq Qaadri): Mr. Kormos.

Mr. Peter Kormos: Of course we support the criminalization of the breach of a restraining order. That protects people from the police saying, "Well, this is a civil matter. I'm not going to get involved." It's clear that it's a policing function.

What observations have you made about the inconsistency, be it within a community or from community to community across the province, in how police respond to women who already have restraining orders of one sort or another?

Ms. Nneka MacGregor: This is really one of the critical areas we've identified from speaking to women across the province. There are some police districts where the police will come every time a woman calls and will actually follow up. They don't just file the report and leave it. Police show up; they follow up. But this is not something that is seen across the province, and we find too many areas where the police come, take a report and don't follow through. They don't go forward; they don't contact the abuser.

We found that part of the problem is because the restraining orders are not consistent in the way they are written, and it isn't—actually, it's another problem around training. The police officers are not trained effectively in how to actually implement. So for us, Bill 133 produces consistency in what a judge can put in the restraining order, and it actually requires the police to follow through. We're hoping that having it written out in this manner is one way to make everybody pay attention, follow through and be more consistent.

Mr. Peter Kormos: Thank you kindly.

The Chair (Mr. Shafiq Qaadri): The government side. Mr. Zimmer.

Mr. David Zimmer: You've obviously given this a great deal of study, and I know you've been a great help to the government and members of the committee who have been sorting this through. We shall pay close attention to what you've said in a very articulate way.

Ms. Nneka MacGregor: Thank you.

The Chair (Mr. Shafiq Qaadri): On behalf of the committee, Ms. MacGregor, thank you for your presence, written deputation and submission.

DONNA BABBS

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter, Ms. Donna Babbs, to please come forward.

Ms. Babbs, as you'll have seen, you have 15 minutes' total time to make your presentation. I invite you to begin now.

Ms. Donna Babbs: Thank you. I'm just distributing my updated submission. I sent a written submission ahead of time.

I'm a family law lawyer. I have been practising family law for 21 years and have been volunteering in domestic violence issues for the past 22 years. I'm a former parttime assistant crown attorney and former panel lawyer for the Office of the Children's Lawyer. I've spoken at an international conference on children exposed to domestic violence, and last month I had the privilege of being asked by the federal Department of Justice to speak at a family violence symposium.

Front and centre in my submissions is section 7 of the charter: "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

Just a few statistics to open up: Brian Vallée wrote, in The War on Women, that in a seven-year study between 2000 and 2006, there were about 101 Canadian soldiers and policemen killed, and there were 500 women killed. We all know what it feels like when we hear in the news about a Canadian soldier being killed, but I think it helps to put it in context that there are five times more women killed annually in Canada.

I'm here today also to say, really, three things to this group: one, my complete sense of outrage about how this issue is being dealt with; secondly, my ongoing sense of helplessness as I deal with victims of violence when I'm in court; and thirdly, my sense of hope, that I hope you will listen to and seriously consider what I have to say so that you can learn from what I've been dealing with for the last 20 years.

My main submission is this: Ontario needs a domestic violence protection act. Bill 133, while it's an improvement, doesn't go far enough. It's beyond debate that women especially need urgent orders to deal with their safety issues. We've had several inquests here and, of course, we've had the Ontario Domestic Violence Death Review Committee reports. There are more than 30 years of research on this issue. A statute needs to be devoted exclusively to protecting victims of domestic violence.

Bill 133 is deficient, in my view, for four reasons:

- (1) It restricts who can apply to court—I'll get through all these submissions hopefully in the time allotted.
- (2) It does not specify the full range of orders that ought to be open to women and victims of violence.
- (3) It doesn't allow for a hearing to be held where people actually testify.
 - (4) It does not give any emergency access to the court.

Our current court rules and our court procedures put a roadblock in front of women trying to get into court to get emergency orders. I'm going to refer mainly to women, because that's what the statistics show. Of course, we know there are male victims of domestic violence as well.

In my respectful view, the failure of this government and previous Liberal and Conservative governments to pass the Domestic Violence Protection Act or some similar statute is a neglect of the responsibility to the victims and our communities.

First of all, going to the research: It's impossible to talk about the research in 15 minutes, but we have two experts in Ontario that everyone must know about—Dr. Peter Jaffe and Nicholas Bala. They're internationally renowned experts, but they don't seem to have made their way to the provincial Legislature's understanding of what needs to be dealt with here.

The Ontario Domestic Violence Death Review Committee reports are your own government's reports. I've attached some of the excerpts from there. In 2007, they reported that they tracked the various risk factors and they decided that if there are at least seven risk factors present, the case is predictable and potentially preventable. In other words, deaths in this province are preventable if we understand the risk factors and do something about them.

I've attached the risk factors there at the end; one is on page 10. You'll see that one of the huge risk factors for women is an actual or pending separation. That's the number one risk factor for women, because they're trying to leave an abusive relationship. History of domestic violence, mental health issues, possession of weapons, custody and access disputes—they're all there.

So what women need when they leave violent homes is, they need access to a court. Not all these issues, you'll realize, are crimes. Criminal law does not protect women completely. A lot of things can be going on in those risk factors that aren't crimes; however, her life is at stake—for example, mental health issues.

First of all, the Domestic Violence Protection Act: What they do is they provide victims with quick access to court. An order is made on an urgent basis and, if appropriate, served on the respondent. If he wants to object to it, there is a full hearing where people testify and people give evidence. It's not just what the woman says and the man says. The judge hears them speak and assesses their credibility. Other people are called as witnesses, whether it's doctors or counsellors or other people who have witnessed the abuse or have knowledge about it. A judge can actually hear what's going on and make a decision based on what people are saying. Once the orders are made, then the victim is not only granted a restraining order, but they get an order for possession of the house and removal of weapons and they also can get orders such as support.

Ontario is at least 15 years behind other jurisdictions. In the United States, all 50 states have had these statutes since 1994, all of which have withstood constitutional scrutiny. In Canada, almost every province and every single territory has a domestic violence protection statute.

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Once you have these statutes—it's in the chart on page 3 of my submission. If we go with Bill 133, we're missing out on people in dating relationships or other intimate relationships, and family members through blood relationship, care relationships or minors. If there's a teenager today in Ontario who is involved in a violent relationship, he or she cannot get access to the court to get an emergency motion. They can in other provinces and jurisdictions.

The next chart shows and really illustrates how much more protection order statutes can do. They can not only restrain contact, but you can then make custody orders and orders that are geared to safety, compel treatment programs, remove firearms—do a whole host of things that a mere restraining order cannot. The key difference is that if it's a comprehensive order, the woman can stay out of the relationship, which is what we want. We don't want her in the relationship; we don't want children exposed to the relationship. If all she has is a restraining order and not enough support, or is in danger of losing custody of her kids, she's going to have a hard time staying out.

Point six of my submission is that victims of violence deserve a hearing in front of a judge or justice of the peace. Affidavit evidence doesn't do it. I'll just read you a quick quote from Jeffery Wilson's On Children and the Law, where he says, in talking about how to get a violent male out of the home, that "the threshold of evidence required to force the violent male ... out of the house is often too great to achieve in the course of interim proceedings that are premised usually on the exchanging of affidavits."

I want to talk to you about a case: Kate Schillings. I was in the same committee hearings in 2000 with Kate Schillings, whose son was murdered by her husband on his first access visit. He murdered his son and killed himself. She went to court with affidavits—she had a series. She had a history of being concerned about his mental health. She wanted that addressed. It was not addressed, and on his first visit he killed him. If the statute directed the judge to consider mental health issues and in fact to prioritize that over the husband's access to his child, the result could have been quite different. My outrage is that I'm here nine years later and nothing has been done. That very same situation could come up with the same result.

The next issue is: Why is our family justice system inadequately structured to deal with this? If you have read the Mamo report, the family justice system is not working functionally. On top of that, we have Family Court rules that make a person jump a hurdle before they can get in front of a judge. If I'm a woman wanting to leave a violent relationship, I have to wait 90 days to get in front of a judge unless I can prove that it's urgent. Many women can't prove that it's urgent because judges don't understand domestic violence and don't know the risk factors. In my respectful submission, the government is failing to meet the needs of the people of Ontario: not

only the victims but also the community of Ontario, because we all suffer under the weight of domestic violence.

When I was here in 2000, the Honourable Michael Bryant was in this room, as was Mr. Kormos. Mr. Bryant has come and gone as Attorney General—no change. I'm a Liberal. For any Liberals in this room, I'm sorry, but I'm shocked at this party. I'm shocked that the Conservatives have done nothing; I think I feel more shocked that the Liberals haven't done anything since they haven't carried it on.

I just don't understand it. Somehow we're missing the boat. Why have the US, other countries and most provinces and territories got it right, but we don't? Why is that? What is going on politically in this province that we can't do what's absolutely the best thing to do for victims of violence? Why are we trying to do second-best? That's what I would like to know.

I'd like to close and say that I suspect that each of you is in this room because you came to do politics, because you wanted to do something and make a difference in people's lives. Each and every one of you has the opportunity to do that, and you've been trying to do that. So I ask you to seriously not just take what's in front of you and say, "Well, that's the draft. That's what the Liberals have come with. That's what my party's come up with." Look at it from an educated point of view. Call Peter Jaffe; he's constantly volunteering his time to educate people on domestic violence. Look to what's going on in the United States. Joe Biden, in the early 1990s, brought forward the Violence Against Women Act in committee. It took years and years, and it didn't pass in the committee until Bill Clinton got elected and then everything took off from there. It takes time, it takes perseverance, but let's face it, we're in the dark ages and we need to get out of it. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Babbs.

Mr. Kormos; about a minute or so per side.

Mr. Peter Kormos: Thank you kindly. It was a very potent presentation. You certainly got our attention. In 2000, we passed in the Legislature the Domestic Violence Protection Act; it was never proclaimed. One of the things that Ms. Elliott and I have been very troubled about is the fact that we welcome the amendments in Bill 133, but the Domestic Violence Protection Act gives a woman or kids—or men; usually it's women, let's cut to the chase—24/7 access to a JP who could make an ex parte restraining order. That's what you're talking about, isn't it?

Ms. Donna Babbs: Yes.

Mr. Peter Kormos: Short and simple. I share your same sense of frustration because this bill repeals the Domestic Violence Protection Act. For Pete's sake, if there aren't enough JPs, say so; if it needs more work before you proclaim it, say so, but don't throw it out. Thank you kindly.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos.

To the government side. Mr. Ramal.

Mr. Khalil Ramal: Thank you very much for your presentation. I listened to it carefully. As you know, that's why we have these committees: to listen to many people come before us and tell us about the weaknesses and strengths of the bill. Hopefully your presentation will be well taken by all the members and also our ministry's office. Hopefully we can address the issues in the future when we do clause-by-clause. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Ramal

Ms. Elliott.

Mrs. Christine Elliott: Thank you very much, Ms. Babbs, for coming today and for your very compelling presentation. I share your view that we really do need a separate domestic violence protection statute. However, we have what we have in front of us right now. Would it be your suggestion, even though it only skims the surface of what really needs to be done, if it didn't include the retraction of the Domestic Violence Protection Act, that would help somewhat?

Ms. Donna Babbs: It would help, but there are still problems with the fact that it's supposedly now enforced under criminal law. My question is, are the police already set up to be dealing with all this enforcement or are we going to be under the same false sense of security as we were when it was just prosecuted under the Provincial Offences Act, as the previous person just identified?

Mrs. Christine Elliott: So we need to continue to work on it?

Ms. Donna Babbs: Right.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Babbs, for your presence and multiple written submissions.

DILKES, JEFFERY AND ASSOCIATES

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenters, Mr. Jeffery and Ms. McKeating of the law firm Dilkes, Jeffery and Associates, consulting actuaries.

As you see in the protocol, you have 20 minutes in which to make your presentation, and I'd invite you to begin now.

Mr. Jay Jeffery: Good afternoon, Mr. Chairman and members of the standing committee. Thank you for the opportunity to come and talk to you about the pension aspects of Bill 133. My name is Jay Jeffery. Beside me is my associate Kelley McKeating, and behind me in the gallery is our office manager, Maryann. Together, the three of us make up Dilkes Jeffery and Associates, consulting actuaries, one of Ontario's largest providers of pension valuations for family law purposes since 1988.

I hope that before you're finished you will all have an opportunity to read the full submission we've provided to you. It's quite comprehensive, but it is covered by a summary, and the most important aspects of that are what we'll be covering today. Let me add too that our full submission has the unanimous support of every expert

pension family law valuator in Ontario, of which there are less than two dozen.

Actuaries who specialize in family law valuations are experts in the mechanics of pensions and the intersection between pensions and family law. As friends of the court, we must be impartial between the plan members, the members' spouses and the plans themselves. As small business owners, necessarily, we offer a responsive and cost-efficient service to the plan members, the spouses, the lawyers, the mediators and the courts that are our clients. If we did otherwise, we would soon be out of business. So, respectfully, I would ask you to keep in mind our expertise and our impartiality as you consider our submission and the submissions of others that you will hear over the next few days.

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I understand that you will hear from several major public sector pension plans which have been somewhat involved in shaping Bill 133. You may wish to keep in mind that there are many more members of small private sector plans and many more plans and many more small private administrators who have not been engaged up till now and who do not have the resources of the major plans.

Typically today, parties rely on one impartial expert pension valuation report which provides a range of values for family property purposes, and the parties must negotiate within this range. The fact is that this range is a reflection of reality, and the ability to match the pension value for property purposes to the specific facts of the situation is, in our view, crucial to real fairness. We might add that it rarely causes great difficulty in achieving a satisfactory property settlement.

I'm sure that most of you are well aware of the Law Commission of Ontario report tabled in December 2008. I'd like to read a brief quote from that report. "The real problem with equalization insofar as pensions are concerned lies not in their valuation, but with settlement." By "settlement," the law commission means access to a portion of the pension funds to settle the equalization obligation.

Mr. Barry Tobin, a prominent family law lawyer and mediator in our home town of London, puts it this way: "Valuation is rarely an issue. The method of calculating pension values seems to be well accepted across the province. It is the funding of the property order/settlement that is the difficulty."

Kelley?

Ms. Kelley McKeating: As you listen to our submission and to other stakeholders who will speak to you on this pension question, it's important to understand that what people call pension division is really the two-step process that Jay just referred to. There's valuation and then there's settlement.

When a marriage breaks down, all of the family property is valued, including the pension. We call this first step the valuation for net family property purposes. This first step always happens, and the pension plan is usually not aware in any way of its having taken place.

Then, if and only if the parties decide that they want to settle the equalization obligation by assigning some of the pension over to the non-member spouse, there is a second step where the amount to be transferred out of the plan gets calculated. It's at that second step that the plan must become involved. So when a plan administrator discusses the pension division process, they are only talking about step two.

Step two is complicated and messy. In Ontario today, it's extremely difficult to divide the pension between the member and the spouse. This does need to be fixed. The settlement provisions in Bill 133 are a great improvement over the status quo, and we absolutely support this part of the bill.

Our concerns lie elsewhere, with the fact that Bill 133 requires that the same pension value be used for both step one, the valuation, and step two, the settlement. It can be hard to understand how a pension plan can have different values. The reason is that the value of the pension depends on which components are included or excluded. On the second page of our written submission there is a graph that you can take a glance at.

A pension consists of a first component, which is called the basic vested pension—this is the guaranteed annual pension that usually begins at age 65 and to which the member has an irrevocable right, even if they leave the plan today—and then there's a second component, the additional non-vested benefits. These include early retirement enhancements and non-guaranteed indexing increases.

The right of a teacher to retire at 85 points with a fully indexed pension is an example of an additional nonvested benefit. If you belong to a pension plan with such generous additional benefits, you typically understand this and you take advantage. For example, the average retirement age for a teacher is about 57, and very few auto workers work beyond their 30-and-out date. The value of these additional non-vested benefits can be considerable, and this additional value is not included in the value of the basic vested pension.

The Ontario courts have consistently, over most of the last 20 years, included both pieces, the basic vested pension and the additional non-vested benefits, in net family property, those step one values. The Law Reform Commission in 1995, as well as the law commission last year, endorsed this, and our professional standards, those of the Canadian Institute of Actuaries, require that we include the value of these additional non-vested benefits when we calculate a pension value in a marriage-break-down situation.

The value for net family property purposes—if it excludes the additional non-vested benefits, it would be unfair to the non-member spouse to the tune of tens of thousands of dollars or even more. If, for example, the basic vested pension is worth \$80,000 and the additional non-vested benefits are worth \$70,000, the cost to the non-member spouse of excluding those additional benefits from family property is half of that \$70,000—\$35,000.

Then, what I'm calling the step two value, which is used to determine the maximum amount that can be transferred out of the pension plan if, and only if, the parties choose this route to settle the equalization debt—if you take that settlement value, the step two value, and include those same additional non-vested benefits, you're being unfair to the plan because that would require the plan to pay out a portion of the additional benefits before the contributions to fund them have been made.

In my example, the plan has \$80,000 set aside for the member's basic vested pension. So it's unfair to make the plan transfer out more than half of that, or \$40,000, to the non-member spouse when the law says that no more than half of the member's pension can be relinquished to the benefit of a former spouse.

Bill 133 requires that the same value be used for both net family property and then settlement purposes. This isn't necessary to solve the problems that concern family lawyers and pension administrators. A single value for both purposes must be unfair either to the non-member spouse or to the plan.

Mr. Jay Jeffery: Thank you, Kelley. Necessarily, then, one single value for both valuation and settlement purposes must either shortchange spouses of plan members by tens of thousands of dollars or force plans to an immediate payout of amounts for non-vested benefits which they really cannot afford to pay out in advance, especially in this time of pension funding crisis.

Fortunately, there is a simple solution to this dilemma, and this is our key recommendation: Delink valuation and settlement. Separate the determination of the value for overall equalization purposes from the maximum transfer amount that the pension plan must pay out. Maintain the maximum settlement—that is, the immediate transfer from the plan—based on fully vested benefits only, and establish a separate valuation basis for net family property purposes which includes a fair share of non-vested contingent benefits which most plan members will ultimately realize.

This simple solution, separation of valuation and settlement, is essentially the same as the recommendations of two law commission reports in 1995 and again in December 2008.

The December 2008 report and recommendations:

Recommendations 1, 2 and 3: Establish the valuation for property purposes to include non-vested and contingent benefits.

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Recommendation 4: Set the maximum immediate settlement from the plan based on the fully vested benefits only. With respect to valuation, I'd like to read to you another quotation from the Law Commission of Ontario report: "Given the complexity and diversity of pension plan options and the multitude of different factual circumstances that could arise, the law commission is not convinced of the merits of a presumption regarding retirement age." It goes on to say that retirement age should be based on the facts of each specific situation. I hope the standing committee will pay close attention to the excel-

lent analysis and recommendations in the Law Commission of Ontario report tabled in December.

I'd like to conclude our prepared remarks by emphasizing this very important point: Our simple solution can only be accomplished if changes are made to the Bill 133 provisions themselves. Since Bill 133 in its present form mandates one single value for both valuation and settlement purposes, the separation of those values cannot be accomplished in the yet-to-be-drafted regulations. These changes will not be particularly difficult to the provisions of Bill 133. We have left with the clerk of the committee a one-page summary of one way that those corrections could be made in a relatively straightforward way.

Thank you again, members of the committee, for your attention. Kelley and I would be pleased to try to answer

any questions you may have.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Jeffery and Ms. McKeating. We'll begin with the government side; about two minutes.

Mr. David Zimmer: Thank you. They say that trying to understand economics is a black hole, but I've always found that trying to understand the work of actuarial science is an even blacker hole. Anecdotally, out there in the street, if you will, in the court system and hearing from various people, we hear about the horrific battles of the actuaries. Anecdotally, what we hear is that each side rounds up two, three or four actuarial reports and then they battle it out in the courts. What I'm hearing from you is that your firm does about 800 valuation reports a year, and you only go to court two or three times. It's \$400 to \$600 a report; that makes about \$400,000 in fees in a year. Where does the rest of the expense come from that we hear about anecdotally, that people complain about?

Mr. Jay Jeffery: Mr. Zimmer, I'm sure that what you are talking about is the debate that occurs between the parties with the help of their lawyers. It cannot be from the actuaries, as there are less than 20 practising actuaries in this field in Ontario.

Mr. David Zimmer: Don't the lawyers call the actuaries as the expert witnesses?

Mr. Jay Jeffery: Yes.

Mr. David Zimmer: So the actuaries are into it, along with the lawyers, as their expert witnesses?

Mr. Jay Jeffery: It is one impartial report, Mr. Zimmer, in practically every case. It is most unusual to find more than one report or more than one actuary involved, and when there is, it's generally over very large figures, and they're based with respect to facts.

Mr. David Zimmer: Are you saying that the typical approach to a piece of litigation is that the two sides

agree on a single actuary and work from that?

Mr. Jay Jeffery: Absolutely.

The Chair (Mr. Shafiq Qaadri): I'll have to intervene there, Mr. Zimmer. Ms. Elliott.

Mrs. Christine Elliott: Thank you for your presentation. It was quite understandable. I just want to clarify: If a pension, with everything all in, was worth \$100,000, for example, and the fully vested part was

worth \$50,000, that would be the transfer part that would be segregated for the benefit of the non-pension-planholding spouse? And then if the balance of it was another \$25,000, that would be subject to the equalization payment over time?

Mr. Jay Jeffery: Precisely.

Mrs. Christine Elliott: Okay. That was my first question. I just wanted to make sure I understood that. My second question is: What views do you have, if any, with respect to the suggestion that the pension plan administrators would then be doing the valuations themselves? Do you think that's something that could be easily done or something that's best left to people such as yourselves?

Ms. Kelley McKeating: I think that's a point that's open to debate. There are public policy reasons why you might want to tell the plan administrators that they have to do it. When it comes to figuring out what they can afford to transfer out of the plan, that's absolutely the prerogative of a plan administrator. When it comes to deciding what the value of that piece of property is for net family property purposes, to determine equalization within a marriage breakdown, I don't think it has to be the plan; I don't think it has to be an expert—the experts are better suited. I have spoken to a number of plan administrators and a number of pension actuaries with large firms, small firms, big administrators, major employers, very small ones, and they are uniformly opposed—and it's a small sample, but they are very concerned about being put in the middle of a conflict, potentially, between the two parties. They're also very concerned about having to calculate a value that includes elements not yet vested.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Elliott; we'll have to intervene there. Mr. Kormos.

Mr. Peter Kormos: Thank you, Chair. I'm sorry we don't have very much time. What drove the legislation, and if the Law Reform Commission didn't recommend what's currently in the bill, where did that come from, in your view?

Mr. Jay Jeffery: My understanding, Mr. Kormos, is that the Ontario Bar Association and some major pension plans have been working with the Attorney General's office for some time now to try and improve the pension legislation as it relates to family law.

Mr. Peter Kormos: Sure. But you're objecting to the manner in which it's approached in this legislation.

Mr. Jay Jeffery: A portion of the manner.

Mr. Peter Kormos: Yes. Are we going to get lawyers in here agreeing with you?

Mr. Jav Jeffery: I hope so.

Mr. Peter Kormos: But what do you think?

Mr. Jay Jeffery: I know one lawyer who is trying to appear a week from today. I hope he succeeds. I'm not sure about the other lawyers are presenting here.

Mr. Peter Kormos: I'm just wondering why the government would not comply with the recommendations of the Law Reform Commission.

Mr. Jay Jeffery: That's a very good question, Mr. Kormos. I don't have an answer for that.

Mr. Peter Kormos: Perhaps, Chair, if the parliamentary assistant were agreeable, there should be an explanation, and it's not complex. Perhaps we could get that explanation from the ministry. We're going to hear a whole lot of things, a whole lot of critique, about the valuation process. Let's understand what we're dealing with and let's see what the ministry has to say about why they chose this particular model and why they didn't choose the Law Reform Commission model. It's not a state secret. We've got to have that before us.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos and thank you, Mr. Jeffery and Ms. McKeating, for coming forward and for your written deputation.

PENSION APPRAISAL SOLUTIONS INC.

The Chair (Mr. Shafiq Qaadri): We'll now invite our next presenter, Ms. Penny Hebert, president of Pension Appraisal Solutions.

Welcome. As you've seen the protocol, you have 20 minutes in which to make your combined presentation. Your written submission is being distributed as we speak, and I would invite you to begin now.

Ms. Penny Hebert: My name is Penny Hebert. I want to talk to you today about individual concerns we have about the pension when it is valued for marriage breakdown purposes.

Benjamin Franklin wrote in 1749, "In New England they once thought blackbirds useless and mischievous to the corn. They made efforts to destroy them. The consequence was, the blackbirds were diminished; but a kind of worm, which devoured their grass, and which the blackbirds used to feed on, increased prodigiously ... they wished again for their blackbirds." This seems to be the case with Bill 133.

A pension is financial security during a person's retirement. A pension is often the second most valuable asset the parties own. A pension is property that must be shared when the marriage ends. A pension is the most personal property a person owns because it is future income for them. A pension is a mystery to everyone except those experts who are directly involved in its drafting, administration or valuation. A pension is not a luxury item like a piece of art or a condo in Florida. A pension is not a savings account. A pension is not like any other property. It has no current market value. It cannot be sold for cash. The value of a pension is not just a number. It is a person's future financial security. The plan administrator is not totally concerned about the individual's circumstances but is primarily concerned about the plan itself.

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The quote from Benjamin Franklin illustrates what I believe was the policy-makers' approach to the pension asset in Bill 133. In their attempt to prescribe a simpler way of dealing with the pension when the marriage ends, the legislators have solved a problem today at the expense of future equity and fairness for all parties to the pension.

I am appealing to you today to review all the submissions you have received from pension valuation experts. Ask questions about the pension. Find out why the valuation of the pension for family law purposes must be done by the experts. Do not let sections 67.2 through 67.4 of Bill 133 proceed without full consideration of what the pension really means to the separating parties.

I have prepared over 4,000 pension valuation reports covering over 1,000 different pension plans since 1994. I have developed valuable relationships with lawyers and plan administrators across the province. I have presented many seminars to groups of lawyers to help them understand the pension. I have published numerous articles on pensions.

You have heard Mr. Jeffery and Ms. McKeating tell you about the pitfalls of prescribing the same pension value for both pension valuation and division. When parties separate, each case comes with its own set of circumstances. I will explain how these circumstances influence the value of the pension asset when the marriage ends. Furthermore, I will illustrate how Bill 133 needs amendments to recognize the uniqueness of the pension.

Valuing a pension when the marriage ends involves a thorough understanding of pension legislation, the pension plan, case law and the circumstances of the plan member and their spouse. We must apply the individual's specific circumstances to all that influences the value of the pension when calculating its value.

Furthermore, 60% of the pensions we have valued are owned by the husband. On average, men have higher incomes than women; therefore, men have more valuable pensions than women. When the marriage ends, it is often the women who suffer financially, because they have a lower earning capacity. They often must make career sacrifices during the marriage, because they're usually the primary caregivers for the children of the marriage. If the same value for the pension is used for pension valuation and division purposes, women will suffer further financial harm, because the plan administrator cannot provide a value of the husband's pension that would interfere with the solvency of the pension fund and the total value would be less for the separating couple.

Even though pension funds cannot be used immediately for day-to-day living, the potential for women to enjoy an adequate income in their later years will be substantially harmed if there are fewer pension funds available for family law purposes. In cases where the husband has the means to offer other assets of equal value to the family law value of the pension, if the pension value is lower, the spouse will end up with even less.

Bill 133 prescribes a no-win situation for many women. The only fair and equitable pension value is one that is based on the standards for calculating marriage breakdown lump-sum pension values, one that considers the member's entire pension earned to the date of separation, one that includes both vested basic benefits and non-vested contingent benefits.

Bill 133, in its current form, is definitely going to make it easier for the member spouse to hide pension

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assets. If the member earned a pension with a prior employer and, due to a change of company ownership or change of employment, that pension is held as a deferred pension, it may not be associated with the current pension. Under Bill 133, the member would apply to their current plan administrator for the value of the pension. Their current plan administrator will have no knowledge of the prior pension entitlements and in fact does not care about the prior entitlements. The plan administrator's duty is to ensure the solvency of their own pension fund.

The responsibility of ensuring that all pension entitlements are accounted for will then rest with the plan member himself. The plan member may have forgotten about the prior pension or chosen not to report the prior pension. In situations where the member spouse is not co-operative, how will the non-member spouse know how to contact the prior plan administrator? How will the non-member spouse's lawyer get the prior plan information? This situation often arises, as companies are continually changing and people move from employer to employer regularly. Lawyers rely on us to do this research for them. Who will they turn to for help under the new pension valuation regime of current Bill 133? Pension valuators will be gone.

To illustrate the uniqueness of a person's pension, we were asked to value a person's LIRA. When a person transfers their pension out of the pension fund when they terminate their job, it must be transferred into a LIRA until the person reaches at least age 55. A LIRA is not a defined benefit pension. A LIRA is like an RRSP, but the owner cannot access the funds until they reach a certain age. We asked him where the LIRA funds came from. He told us that he earned defined benefit pension entitlements as an employee of Falconbridge starting before his marriage. His employment was terminated during his marriage, and the pension funds were transferred to a LIRA account.

Since there was a defined benefit entitlement at the date of marriage, it was necessary to value the defined benefit pension at the date of marriage in order to find out how much of the current LIRA funds to attribute to the marriage period. In a case like this, who would assist the person with the proper valuation of the LIRA? Under the new pension valuation regime of Bill 133, pension valuators will be gone.

Our written submission lists 14 such individual situations that would make the regulations associated with Bill 133 so complex and lengthy that placing a proper value to the pension will become even more difficult than it is now. I'm hoping that you get a chance to read through each of those 14 points that I've listed. They illustrate situations that bring the individual front and centre to the valuation process.

There are many, many more situations that impact an individual's pension value when the marriage ends, individual situations that are at risk of being overlooked if Bill 133 is not amended to allow for the valuation of the pension to be prepared by those very few of us who

have the experience and the expertise to do so. Plan administrators do not have the experience to place a family law value to the pension. Plan administrators do not currently have the systems in place to do this.

Legislative changes are needed for the division of the pension when the parties wish to use the pension to satisfy an equalization debt, as Kelley and Jay mentioned prior to me. Legislative changes are not needed for the valuation of the pension. Why change a system that works? Why take the responsibility of placing a family law value to the pension from the experts and give it to those who are not experts? To cut costs?

Subsection 67.2(6) prescribes that the plan administrator may charge a fee for preparation of the pension value. The fees currently charged by experts are not unreasonable when one considers the substantial value of the pension. Fees charged by experts to value a business when the marriage ends are much higher. Legislative changes should be changes that can survive the test of time, changes whose consequences have been thoroughly understood and examined.

The fairest solution has been presented in the law commission's report, which outlines their recommendations for changes to the valuation and division of pensions on marriage breakdown. This solution resolves the important issues of (1) the method to be used for calculating a fair and equitable family law pension value, (2) the added responsibilities and burdens to the pension plan administrators who currently do not have the experience and the processes in place to calculate a family law value for the pension, and (3) the preservation of pension fund solvency while satisfying family law pension division requests.

I encourage you to give this issue of placing a proper value to the pension the fullest consideration needed before this bill is passed in the Legislature. My recommendations, along with those of other professional pension valuators, will ensure that the property will be distributed fairly and equitably according to the intentions of the Family Law Act.

That concludes my presentation, and thank you very much for inviting me to speak before you today.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Hebert. We'll have about two minutes or so per side, beginning with Ms. Elliott.

Mrs. Christine Elliott: Thank you very much, Ms. Hebert, for explaining the situation to us with the pension valuators to take a far broader range of factors into consideration when making a determination about the actual value and the equalization factor; it's so important. Do you have any idea whether anyone was consulted with, or was your group consulted with, with respect to the cost savings of having the plan administrators doing this analysis rather than the current pension valuators?

Ms. Penny Hebert: I have heard comments from lawyers. I know that some people are proposing that it costs a lot of money for the couples, when they separate, to have the pension valued. I have heard more from

lawyers, who have told me, "We don't have an issue with the cost of preparing a valuation for the pension." From \$400 to \$600 is really not difficult for the parties to pay when you look at the substantial value of the pension that's involved. Most lawyers I have talked to have no problem at all. Their clients don't have any problem at all with paying that fee.

Mrs. Christine Elliott: Thank you.

The Chair (Mr. Shafiq Qaadri): Mr. Kormos.

Mr. Peter Kormos: Of course, your fees pale in comparison to lawyers' fees. They seem trivial beside the lawyers' five-digit or six-digit accounts.

Once again, I'm trying to get a handle on who's driving this. I hear you; I hear other actuaries; I've talked to actuaries in my own community. This is not consistent with the Law Reform Commission recommendation. Where does this model that's in Bill 133 come from?

Ms. Penny Hebert: That's the \$64,000 question for me. It just came out of left field for me—

Mr. Peter Kormos: Hey, don't criticize left field.

Ms. Penny Hebert: No harm intended. I was really surprised to see Bill 133 come out with that conclusion. It doesn't seem to fit with any understanding I have of what a proper marriage-breakdown pension value is. I concur with Jay when he suggested that it may have come from pressure from the Ontario Bar Association, which wanted to simplify the pension process.

Mr. Peter Kormos: Why would they? You said that the lawyers don't seem to mind.

Ms. Penny Hebert: The lawyers I have spoken to don't seem to mind.

Mr. Peter Kormos: I guess we'll have to ask them when they come here.

Ms. Penny Hebert: That would be a good question to ask the Ontario Bar Association. It could have come from the pension plan administrators themselves, because it's their responsibility to divide the pension in such a way that the pension fund solvency will be guaranteed and that not too much money goes out of the pension fund to satisfy the equalization debt. So when there is a different value for family law purposes than there is for pension division purposes, sometimes it's hard to reconcile the two, and that can cause difficulties: What do you do with the difference between the family law value and the maximum amount that can be transferred out of the pension fund? That may be where they were going when they decided to suggest one value.

Mr. Peter Kormos: Thank you.

The Chair (Mr. Shafiq Qaadri): To the government side. Mr. Zimmer.

Mr. David Zimmer: You used the expression that the pension administrators, in your view, don't have the processes in place that the actuarial consultants have in place to do this piece of work. Can you very simply just tell me what those processes are that actuarial consultants have that pension administrators don't have, in your view?

Ms. Penny Hebert: Their systems are set up specifically to calculate commuted values. They would have to

develop new systems in order to calculate what we call marriage-breakdown values, which include the value of the non-vested contingent benefits. They would have to develop those systems. The pension plan administrator is not as closely in touch with the individual situation as the individual pension valuator is now. I'm not sure that they'd want to get involved with all the personal circumstances. They would have to develop systems that would be flexible enough to accommodate all the different personal situations that come up.

Mr. David Zimmer: And could pension administrators quickly and easily set up those processes?

Ms. Penny Hebert: They could set up those processes, and I can't speak for how well-equipped they are to do that. I'm sure there's no reason why they can't set up those processes.

Mr. David Zimmer: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Hebert, for your presentation and written deputation.

MICHAEL COCHRANE

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter, Mr. Michael Cochrane, who will be presenting to us. Are you here, Mr. Cochrane? Yes.

Please come forward. You'll be presenting to us in the capacity of private individual, which means you'll have about 15 minutes to make your presentation. I invite you to officially begin now.

Mr. Michael Cochrane: Thank you. Just on the second page of the handout that you're going to receive, there's a little bit of background on where my experience in family law comes from, which is as a private practitioner. Back in 1986, I was one of the policy lawyers who worked on the original Family Law Act and the Support and Custody Orders Enforcement Act, which is now known as the Family Responsibility Office.

On the second page of my handout, I've taken sections of the act that have caused me to scratch my head and maybe think of some suggestions that might be helpful. But in particular, on the first one, section 6 of the bill proposes to change section 21 of the Children's Law Reform Act. This is the new affidavit that's being called for, which would have people file an affidavit with the court describing the applicant's involvement in any family proceedings, child protection proceedings or criminal proceedings. I would recommend—and this is the first recommendation on that page—that you add the words "as a party" to that provision, because to not have this limited to parties would risk dragging witnesses and, in some cases, victims into family law proceedings. I don't think it was intended that it would cast that broad a net, but certainly adding the words "as a party" would narrow down the group that's being caught.

Just as it concerns criminal proceedings, I would recommend that you consider limiting the criminal proceedings to cases where there has been a finding of guilt, because to do otherwise would risk having people being required to file, as a part of that affidavit, that they were in a criminal proceeding that led to an acquittal or was perhaps withdrawn or could have been stayed for lack of being pursued. The last thing that we want, as family law lawyers, is to have someone file an affidavit with the family law courts saying that they were involved in a criminal proceeding which they were acquitted for, and the parties then end up in a debate in the family law proceedings about whether that person should have been acquitted in the criminal proceedings.

The example I'd give you is somebody who has been charged with some form of domestic violence. They go over to the criminal courts and, for whatever reason, good or bad, they are acquitted. They then come over into the family law proceedings and they're forced to, on a different standard of proof, defend themselves again, perhaps, on whether they should or shouldn't have been acquitted of the domestic violence charge. That's a potential Pandora's box if it's left as wide open as it is right now. The same recommendations would apply to subsections 21.3(1) and (2) that have been proposed.

Section 7 of the bill proposes to amend the Children's Law Reform Act with respect to bringing police records into the family law system. This one, for some reason, is only applicable to non-parents seeking custody. It would be my recommendation that this apply—if you're going to do this—to all applicants, whether they're seeking

custody or access.

On the issue of all applicants: It would boggle most judges' minds, and lawyers', that you could be in a situation where courtroom number one is dealing with a case where the applicant is a parent, and they don't have to provide criminal record checks and children's aid society checks, but in courtroom number two it's a grandparent who's applying for custody of a child and they do have to provide criminal background checks. So I think the net needs to be cast a little wider there. It should also apply to access. Some access orders are very extensive. They can include a child spending an entire summer vacation with a parent, non-parent, or grandparent. So I would recommend there that it be extended to custody and access and that it apply to all applicants.

The next recommendation is about the resources. It's one thing to say that you're going to do this—I don't know where the police are going to get the resources to provide these kinds of reports about records. I also am very, very concerned—and I'll come back to this at the end of my presentation—about the confidentiality provisions, because not only do we have to see the police and other authorities get the resources to provide these reports, but there has to be something put in place to ensure the confidentiality. Section 8 proposes to amend the Children's Law Reform Act by adding a section that, again, non-parents must disclose previous encounters with children's aid societies. This should not apply only to non-parents. It should also apply to custody and access, the same as the other provision. Again, there will need to be resources delivered to the children's aid societies to comply with this provision.

I would say from a reality check point of view, just reading through the sections that are in this bill, that if they were law tomorrow we could pretty much predict that at least a month would be added to every single custody application that is going forward—probably more, because these reports aren't going to be available right away. There's a provision in the proposed legislation that talks about parties being able to request an extension of the time for filing the reports, and I would predict that this will become standard operating procedure on every custody application. There will be an automatic request for an extension of time. That will mean that no orders are made. Courts will likely not be making interim orders until this information is available and certainly wouldn't be making any final orders. So we're going to see a huge drag on the system with those kinds of reports being required. I'm not saying that those reports aren't a good idea, but you need to be realistic about what it's going to do to the system.

The fourth recommendation I have, under point 3 on page 2, is that you have to recognize that these provisions only apply to applications to the court. There's nothing in here to stop people from entering into domestic contracts to, I'm not saying "subvert" these amendments, but

certainly to go around them.

I would also suggest, just again, from what happens on the street in family law, that a client is going to come in and say, "I want to apply for custody of my grandchild"—and there are lots of these cases that go forward. I personally have probably done 30 or more grandparent custody cases. When that person learns that in order to do the application, they're going to have to disclose every family law proceeding that they've been involved in right now, that would mean somebody who's not even a party—every single encounter with children's aid societies and every single encounter with the criminal law system. Some of those criminal encounters may not be relevant in the least to whether they can have custody of a child. If they think that having to put all of that on the table is going to possibly make it public, then we may see some people who are otherwise worthy applicants for custody or access to children decide that they're not prepared to do that, particularly if the protections around confidentiality aren't stronger. That would be true, I would say in particular, if somebody went through a criminal proceeding and they were acquitted, or the charges were withdrawn or the charges were stayed because they weren't prosecuted quickly enough. Those people would still have to put all of that information into a family law application.

Point 4 on page 2: I just point out that there are three subsections in this bill that say that admissible evidence shall be considered by the court. To me, each time that this appears, it's absolutely meaningless. I don't know what it would do for a court to be told that a piece of evidence is admissible and they shall consider it. That's what they're doing, so you don't need to say it. I'd take that out or at least consolidate them.

Point 5 on page two; Sections 12 and 15 propose to amend the Children's Law Reform Act to improve the

court's powers to control parties during the litigation. The way that they do it now is to use restraining orders, and that can be a bit of a blunt instrument. No one likes to be subject to a restraining order: It doesn't sound good. Judges often revert to making mutual restraining orders, which sounds equally bad for both parties. They have made noncommunication orders in the past. I think these amendments are better descriptions of what the courts are actually doing, so this might make it a little easier for the court to make those types of noncommunication orders.

Section 18—this is on page 3 of my submission, paragraph 6—proposes to amend the Children's Law Reform Act to add confidentiality provisions. These subsections are very, very important, and they do not provide for what happens if there's a breach and the confidential information is disclosed. We have to remember that a great deal of otherwise confidential information will now be in the hands of very angry family litigants. Someone will be handed a file or an affidavit at some point in the process that talks about every encounter that someone else on the other side of the case has had with the criminal law system. Controlling what they do with that information is very important, because people can lose their jobs over that. You can't go for a job interview now and be asked about your criminal past. In many circumstances you're not allowed to ask those questions, and yet that information could be on the street overnight. There's an incident in the paper right now about young people talking on Facebook about the girl who was just convicted of murder here in Toronto. They are naming that girl; all of the details are out on the street. The same thing could happen with this kind of information. My recommendation is that we add a provision to section 70 providing the court with specific powers to punish the breach of the confidentiality provisions. That should be the equivalent, really, of a provincial offence.

Section 7 on page 3—I'm talking about section 18 there—which proposes to amend the Children's Law Reform Act to allow any interested person to apply for the protection of the confidentiality provisions: It's a little subsection that's tucked in there, but I think what the legislative drafts people are trying to anticipate here is that somebody named in those confidential records is not going to want that information disclosed; they're going to want the confidentiality protection. This provision says that they can apply to the court to have the records maintained as confidential. That's great, but how will they know this is happening? If somebody on the other side of the city or on the other side of the province is applying for custody or access to a child and those confidential records are on the way to the court process, how will the people who are named in them know? And how will they know to come forward and ask for the confidentiality to be given to them? My recommendation there is that notice provisions be added to section 70 so that any interested person receives adequate notice of the impending disclosure. Again, that's going to slow things down.

Paragraph 8 at the bottom of page 3: Again, there are three provisions here that all say exactly the same thing,

and this is to allow portions of the Family Law Act to give the court the power to order noncommunication orders, so that they can do things in that part of the act. It's good to have this power, but you don't need to have it three times. I would consolidate this and just put it in one part of the act and have it apply to all sections, because it starts to look like there are three different kinds of noncommunication orders.

Page 4, point 9, section 22: This is the calculation of net family property under the Family Law Act, and there is now a change—I don't really have too many comments about the pension provisions, but I do have some comments here about this calculation of net family property, and it concerns pensions as well. We pretty much know how to do these things for the most part now in family law, and this provision that is changing which debts and liabilities are and are not deducted for date of marriage, and the pension changes, in my view, are going to increase litigation, not reduce it. My only recommendation is that if this goes forward, everyone should recognize that this will invite litigation over some of these changes.

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The Chair (Mr. Shafiq Qaadri): You have a minute left, Mr. Cochrane.

Mr. Michael Cochrane: Thank you. Just quickly, there are some other recommendations there about changes to the definition of "spouse" which I would urge you to reconsider. The Pension Benefits Act changes deal with the definition of "spouse." They've used the definition of "spouse" from part III of the Family Law Act, which includes common-law spouses. But really, part I of the Family Law Act is designed to divide property that's owned by legally married spouses, not common-law spouses. There's a broader definition used in the Pension Benefits Act. It should be narrowed to just legally married spouses so that we don't see common-law spouses thinking that they're going to be dividing pension benefits on date of separation.

Just in the few seconds that I've got left, at the very end of my paper I've put some general comments about family law, because really, everything else you're doing here is just tinkering with the system. What I wanted to tell the committee is that the family law system is in complete collapse out there. This is a terrible system—

The Chair (Mr. Shafiq Qaadri): I'll have to intervene there, Mr. Cochrane. I thank you for your considered written deputation and presence and actually contributing to the original legislation previously.

ONTARIO PENSION BOARD

The Chair (Mr. Shafiq Qaadri): I would now invite, on behalf of the committee, our next presenters: Mr. Shena of the Ontario Pension Board, senior vice-president of stakeholder relations, and—please come forward.

Mr. Peter Kormos: Chair, while those people are seating themselves, we've got a most unusual submission in that it's a submission signed by several provincial

family law judges. I'm wondering if that submission, which Mr. Cochrane and others might be interested in, is available on the pile over there for them to pick up, and if it is, I would encourage them to read it.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos.

Mr. Shena and your colleague, as you've seen, you have 20 minutes in which to make your combined presentation. Please do identify yourselves for the purposes of Hansard's recording. The time begins now.

Mr. Peter Shena: My name is Peter Shena. I'm senior vice-president of stakeholder relations and pension policy with the Ontario Pension Board. With me is Thu Truong.

Ms. Thu Truong: I'm a pension policy strategy adviser with the Ontario Pension Board.

Mr. Peter Shena: Mr. Fuller, the president, sends his regrets as it is March break and he decided to spend time with his children this week.

First, I'd like to thank you for this opportunity and give you some background on who we are.

The Ontario Pension Board is responsible for the administration of the Ontario public service pension plan. The PSPP, as it's known, is a defined-benefit pension plan. We provide pension-related services to approximately 38,000 members, 36,000 pensioners and their survivors. The membership is made up of eligible employees of the Ontario government, its agencies, boards, commissions and public bodies.

We're here today to express our support of the legislative reform for the division of pensions in marriage-breakdown situations. In our view, it's badly needed, as the current environment creates confusion for all parties involved, and with that confusion comes significant cost to the member and non-member spouse and in the administration of the pension plan.

I'm going to focus my remarks today on three key points as we see them: providing the non-member spouse with the option to leave their entitlement in the member's pension plan; the valuation methodology used to calculate the non-member spouse's entitlement; and, third—a different but related point—how much of a member's pension can be seized or assigned for division or support.

On the first point, providing the non-member spouse with the option of leaving their entitlement in the member's plan, which is covered under section 67.3 of Bill 133: We want to commend the government for recognizing the importance of defined benefit pensions by providing in the bill the option to the non-member spouse of leaving his or her lump sum in the member's pension plan—if the plan allows, however. We believe that all plans should be required to offer this option. If the plan doesn't allow the non-member spouse the option to stay in the plan, then we think that the standard will be that plans will force the non-member spouse out of the plan. In our view, this creates an unfair result.

Divisions of pension on marriage breakdown usually arise when the pension is most valuable, and that is when the split takes place after a long marriage—and it's likely to be based on a traditional marriage. Therefore, the most

significant assets are the home and the pension. In some cases, particularly for those living outside large urban centres, the pension is the most significant asset.

Forcing out the non-member spouse imposes risks on the non-member spouse that they would otherwise not be exposed to within a defined-benefit plan model. These risks include: the investment risk, or making the right decisions on investing your funds to ensure you have retirement income—I'm sure there's no need to go through the personal tragedies of the current environment and people trying to manage their own retirement income—that is, the risk of not properly managing the decumulation of the asset. Simply put, you run out of money in old age. The last one I'd like to mention is the risk of inflation eroding the purchasing power of the pension.

The non-member spouse loses the positive effect of risk pooling that a defined-benefit plan provides, including the management of investment decisions, the administration of the plan by experts and the lower cost associated with participating in a large collective. These risks are effectively assumed by the individual, in this case the non-member spouse. In our view, risk has value, and therefore there is a price attached. If the pension amount is split equally and the non-member spouse is forced out of a defined-benefit plan, then the member spouse has a more valuable asset. To ensure a fair split, the non-member spouse will need to receive a larger share of the assets.

Just to mention, OPB will be taking advantage of the provision if it's passed, and that's section 67.3. We will be offering the non-member spouse the option to stay in the plan. We've looked long and hard at this issue, and we believe it achieves a fair result for all parties.

You may hear from others that this is costly to administer. We believe that it is no more costly than what we currently administer. In fact, we expect that with clarity provided through the legislation, the cost will be going down. It's not difficult to administer, it's not difficult for family law lawyers to understand and it allows for a clean break for the parties because we would set up a separate account for the non-member spouse.

The next point I'd like to speak about is the valuation methodology for calculating entitlements. That's under section 67.2 of the bill. It's our understanding that the principle behind Bill 133 is to enable the parties to settle immediately with a clean break. At the same time, the goal should be fairness between the parties, and as such, we're satisfied that using the termination method with the date of separation as the valuation date to calculate the commuted value of the pension would accomplish these goals, but we would add one modification. The nonmember spouse can argue that the termination method undervalues the benefit because it doesn't incorporate the value of ancillary benefits, such as early retirement provisions.

We believe there's a simple solution that offers a compromise for both parties and that is not subsidized by

other beneficiaries of the plan. In our view, this could be accomplished by treating the calculation of the pension on marriage breakdown as a full termination by the member. This would then require the calculation of the 50% excess contribution refund, which, if any, would be split accordingly with the non-member spouse. Under the current provisions of the Pension Benefits Act, the division of pensions on marriage breakdown is not treated as termination, and therefore the 50% excess contribution calculation is not required.

The final point I'd like to speak about is giving the non-member spouse greater than 50% of the benefit earned during marriage, or what has come to be known as stacking.

Mr. Peter Kormos: I'm sorry? Mr. Peter Shena: Stacking.

The proposed legislation is silent on this issue of stacking, which is the ability to seize or attach more than 50% of the pension accrued during the marriage. The current provisions of the Pension Benefits Act restrict the entitlement of a non-member spouse to 50% of the pension accrued during the marriage period. However, there is a provision under which the non-member spouse can stack an additional entitlement that would provide an amount in excess of the 50%. This we believe to be an unintended result.

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The 50% rule is an essential public policy objective. Therefore, our recommendation is that the 50% rule be retained and strengthened to eliminate the possibility of assigning up to 100% of the pension accrued during the spousal period. We believe there's a public policy intention that recognizes that defined benefit plans are protected and an important element of retirement security for members and their spouses.

Marriage breakdown invariably involves a diminishment of the standard of living for both parties. It is in the interests of the spouses and society at large that the protected element not be entirely removed from the member spouse. The issue should be clearly addressed in the regulation.

We do understand that there are extenuating circumstances that must be dealt with. One example I can think of is a situation where there are significant support arrears and no other asset to attach. In those circumstances, we could understand the need to seize an amount beyond 50%, but this exception must be clearly defined and articulated in the legislation and the non-member spouse must be required to satisfy a judge or court that there are significant support arrears and that there are no other assets to attach or seize. The court would then order an assignment for support arrears over and above the equalization of assets.

This concludes my formal remarks. I'm happy to take any questions from the members. I have brought along copies of our submission to the Law Commission of Ontario and a brochure that we provide to members and non-member spouses and their agents upon marriage breakdown which assists them with the division of the

pension. The brochure outlines a unique solution that we offer currently to those who are dividing the pension on marriage breakdown, and it's a solution that has met with support from all affected parties. In our opinion, the solutions that we've put forward are doable.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Shena. We have about three minutes per side, beginning with the NDP. Mr. Kormos.

Mr. Peter Kormos: This has been fascinating for me. I never knew actuarial types were such interesting people. Now I do; it's been confirmed.

Mr. Peter Shena: Just a correction: I'm not an actuary, nor am I a lawyer.

Mr. Peter Kormos: To your credit. But again, all this complex stuff which most people never even have to think about or contemplate—one of the issues here, though, seems to be who gets to determine the value of a pension. Let's set aside the two types of evaluations. What is your argument to exclude actuaries, or people who do these assessments or appraisals, from that process and letting the fund itself determine the value?

Mr. Peter Shena: The value, as expressed in the legislation, is a calculation that we do every day for members. For us, it makes sense that the pension plan administrator just continue to do that calculation and provide it to the members, and the parties would deal with the split accordingly.

It does reduce costs for the parties. There is a provision in the proposed legislation that would allow the plan administrator to charge a fee. It is our intention not to charge a fee for this service. It's something that we currently do, and under the current situation it's actually more costly and more complicated for us to do what we do. The proposed legislation would clarify things and make it a lot simpler.

Mr. Peter Kormos: Because of the mathematical formulas provided?

Mr. Peter Shena: The methodology, yes.

Mr. Peter Kormos: Why are actuaries being used in the process of family breakdowns?

Mr. Peter Shena: Right now?

Mr. Peter Kormos: Yes.

Mr. Peter Shena: There is no clarity. There's no simple solution to the calculation currently. Essentially, the actuaries do the calculation and come forward with a value that's then split. The plan administrator reviews the figures that are presented before us, and we do our own calculation. If the calculation that the actuaries put forward is greater than 50% of the benefit accrued in the plan during the marriage period, then we don't pay out an amount above that. That's settled outside of the pension—the excess amount.

Mr. Peter Kormos: It doesn't surprise you for me to tell you that there are people shaking their heads, sitting behind you here.

One of the problems we have here, Chair, is that we don't get a chance to hear these people engage each other in a discussion so that they can respond. I suppose we'll

have to figure out a creative way of doing that, or extrapolate.

The Chair (Mr. Shafiq Qaadri): To the government side. Mr. Ramal.

Mr. Khalil Ramal: Thank you very much, Mr. Shena, for your detailed presentation. It seems that you are very expert in this field, from your title and also from your presentation. We listened to many speakers before you who spoke about this issue, and they weren't happy with the bill. They think it's going to complicate the issue and make it more costly, and they're asking us why we're changing it. The current and the present law isn't working, so we have to change to something that works.

I heard your presentation mention that if this bill passes, it will make it simpler and less costly for people, with exceptions, if we change some provisions and add some to the regulation in the future to make it satisfiable to yourself and to the people of Ontario. So what do you have to say to add to the people who mentioned before you to not change and to remain with the current

process?

Mr. Peter Shena: Unfortunately I didn't hear their statements, so I'm not sure what their position is as to why the bill would make it more complicated. In our view, the clarity simplifies the process considerably. Our experience currently is that it's like we're spinning our wheels in the mud and can't get out of the mud. Every time we get a separation agreement that deals with a pension split, it takes us a significant amount of time to sort out what is and what isn't, what can be done and what can't be done. It invariably requires the member and the non-member's spouse going back to their agents, whether it's a lawyer or an actuary, to do further calculations or engage the pension plan administrator in a discussion of why we can't administer the agreement as it's written, which adds cost to the parties and adds cost to the administration. If there's clarity, then we know exactly what we are to do and what can and can't be

Mr. Khalil Ramal: So do you think that if this bill passes with some kind of modification, that will make it more clear and more cohesive for both sides?

Mr. Peter Shena: Yes, with the modifications that we recommend.

The Chair (Mr. Shafiq Qaadri): Ms. Elliot.

Mrs. Christine Elliott: Some plan people have told us that they're a little bit concerned about getting drawn into family law disputes if they're the ones who deal with the valuations and so on. It would seem that the plan that you're proposing as is set out in Bill 133 applies to standard form situations where it's very clear-cut that there are no outstanding support obligations and no other issues with respect to other pensions that may have predated the pension that you're dealing with. I'm just wondering if there's a sense that you're dealing with, family law issues being often very messy—what situations you would want to defer to other people and when you would take that decision.

Mr. Peter Shena: Hard to say until the legislation comes into practice. Currently, we deal with a number of

messy situations, and as they come up, we will contact the parties and engage in a discussion as to what can and can't be done from our perspective. I can't really give you an answer to that until we see what kind of situations arise. Again, though, with greater clarity in the legislation and a prescribed methodology that clearly defines the methodology to be used, it's calculated and we provide the value to the parties and they split it. If the date of separation is the valuation date and only 50% of the benefit could be split on marriage breakdown, that which was earned during the marriage period, the calculation for us is fairly simple: "It's from this date to that date. That's what was earned. It's \$100,000; \$50,000 to the nonmember spouse and \$50,000 to the member spouse." If you accept our recommendation to allow the nonmember spouse to stay in the plan, we'd give the option to the non-member spouse to stay in the plan and use that amount to provide for a pension under the defined benefit plan that's offered by the administrator. 1620

Mrs. Christine Elliott: So I guess it's fair to say that there are still a lot of unanswered questions about how it's going to operate, to say whether that's something plan administrators are going to be able to deal with in the majority of cases.

Mr. Peter Shena: I would say that in the majority of cases, plan administrators should be able to deal with what arises. But there are always going to be situations we haven't thought of.

Mrs. Christine Elliott: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Shena and Ms. Truong, for your deputation and written submission on behalf of the Ontario Pension Board.

CANADIAN CHILDREN'S RIGHTS COUNCIL

The Chair (Mr. Shafiq Qaadri): I now invite Mr. Wilson and Mr. Ludmer, of the Canadian Children's Rights Council, or the Conseil canadien des droits des enfants, to please come forward and introduce themselves.

Gentlemen, you have 20 minutes to make your presentation in either official language, and I invite you to

begin now.

Mr. Grant Wilson: Good afternoon. I'm Grant Wilson, president of the Canadian Children's Rights Council. We're an all-volunteer organization with members across Canada—we even have members in Australia and the Netherlands. We are entirely voluntary, working on children's rights, and have been for quite some time. Back in 2000, we presented on the act you are replacing, and have appeared on all sorts of different matters, including the special joint committee on custody and access 10 years ago.

The gentleman with me, Brian Ludmer, is a special adviser of the Canadian Children's Rights Council. He is a lawyer and an expert on parental alienation, a terrible form of child abuse that affects hundreds of thousands of

children significantly. He'll be speaking for a few moments to introduce you to that. He is also one of the key speakers at an international conference on parental alienation being held here in Toronto this weekend, as a matter of fact, with many American experts and all sorts of people coming from different continents to be here.

On that topic, by the way, I checked with the conference convenors on the weekend, and to their knowledge, no one from the Ontario government is attending—no policy advisers. This covers all sorts of different ministries, from education, educating teachers about this form of child abuse; to Attorney General; to health—mental health is part of this for children. We encourage you to talk to the different applicable ministries, learn about this and get somebody down there and do something about this.

On that subject, as a matter of fact, one of the most horrific cases I've ever come across was in the US, where a child was so brainwashed by the mother that at change-over time this 10-year-old boy took the mother's handgun, went out to his father's car and killed his father. That's how serious some of these cases can be. This is criminal behaviour. When somebody abducts a child, whether it's a parent or not, it is still criminal in nature, and it is a terrible form of child abuse.

One of the key points regarding the Canadian Children's Rights Council is that we have about a 2,000-page website, which is visited in any month by people from 160 different countries. We're the number one website in Canada regarding children's rights for Canadian children, and we run a virtual library with all sorts of documents, news articles etc. relating to children's rights in Canada and sometimes elsewhere for comparative purposes. You'll find there some progressive laws from different places, such as Australia, which has come across with some very important changes to their laws that are substantially more progressive than Ontario's.

I encourage all of you to read the special joint committee's report, For the Sake of the Children, from 1998. That was a committee of both Senate and House of Commons members that toured this country and heard from over 500 witnesses, including an equal number of men and women, and came out with a report. Virtually none of those recommendations have been implemented in Ontario.

One of the issues that isn't covered here, and I'll just mention it in passing, is that we currently do not have any kind of means test or anything like that with regard to the collection of child support from payers. It doesn't matter what the recipient's income is; they get government support for the purpose of enforcement. At the Ontario Bar Association stakeholders' conference, the past president and expert family law lawyer agreed with us outside the conference that parent-child relationships should be supported by the government in a similar manner and there should be no means test at all for parents to have lawyers provided by the government for the purpose of enforcing court-ordered parenting time schedules.

Mr. Peter Kormos: Who was that?

Mr. Grant Wilson: Heather McGee, the past president of the Ontario Bar Association.

As a matter of fact, our laws are so backward here that we're basically 20 years behind the times. If you go to Australia, for example, you won't find that they use words like "custody" and "access." They make "parenting orders." They don't use "sole custody." There's no such thing. I can show you orders from the Federal Magistrates Court of Australia that don't have any of this.

You may recall another law, which actually has been very active in family law in the last four or five years, and that has to do with paternity fraud and children's identity rights. With regard to that—and you can see it on our website—Spain, France, Venezuela and Korea have all now awarded civil damages to men who have been the victims of paternity fraud, and we expect at some point that their children will end up suing the mothers as well. This has nothing to do with recovering any costs of raising the children; it's strictly damages.

As a result of a major case in Australia, which went through to their highest court, they changed their laws and the Attorney General, Philip Ruddock, announced in June 2005 that their new law would require that any woman who committed paternity fraud would have to reimburse her husband or ex-husband, as the case may be, for the cost of raising the child and any child support he paid. That's sort of closing the barn door after the horse is gone, and we advocate for mandatory paternity testing, along with all the newborn tests, the screening that is done by the Ontario government. A mandatory test there for paternity would be terrific. It would cost the government all of \$35 to \$50, and it would save a lot of misery to people who are misidentified at birth or whose mothers keep the father off the birth record.

Ontario is in gross violation of the Supreme Court of Canada's decision in 2003 that gave you 12 months to correct the Vital Statistics Act and properly identify fathers for the sake of children's identity rights. According to the Supreme Court of Canada, children have the right to be named after both parents. That doesn't happen in Ontario. One phone call to Service Ontario explaining that your girlfriend had a baby and you have absolute DNA evidence that you are the father will result in them telling you that you are not allowed on the birth registration unless the mother agrees to it. You can read that in the current Vital Statistics Act.

I bring your attention to the Statement of Live Birth form used to register a child's birth, given to the mother after the birth by the medical facility—the medical attendant or midwife, as the case may be. It says, "It is an offence to intentionally lie on this statement. An individual who wilfully makes a false statement on the form, may on conviction be liable to a maximum fine of \$50,000 or imprisonment for a maximum term of two years less a day."

We know from Judi Hartman, the director of Vital Statistics for Ontario, that approximately 6,500 children a

year don't have their father's information on there, and we know from the phone calls we get virtually every day that there are many cases where the father is known to the woman and she just decides she can keep him off there, and the child will not bear his name, hyphenated with hers, per the Supreme Court of Canada. If she can do it, she will. That's how it works. There's a \$6.3-million lawsuit you can read about on our website against the BC government for not complying with the Supreme Court of Canada decision. I would expect that upon completion of that case there will be a class action suit against the government of Ontario for not complying with it for the same reason.

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Children have the right, according to the Supreme Court of Canada, to be identified with both parents, and it's important, when a child is born, to get their major medical information, get their identity established then and not have somebody turn around later on and have them find out, "The man I thought is my father is not my father. I've got a biological father out there someplace." It's extremely damaging to these people. We've seen all sorts of testimony about this kind of damage done to people. This occurred, I guess it was about five years ago now, at the committee hearings prior to the enactment of the Assisted Human Reproduction Act, where people explained the difficulty they had not knowing their heritage, background or any major medical information because they were the result of egg and sperm donors. Names are important; they're part of the bonding process, and these are extremely important.

I'll go through one more issue here and then we can get into the PAS. With regard to the identity issues, I want to tell you about the kind of thing that we've seen. A man called and wrote me explaining that a woman with whom he had lived had given birth and he was now a father. He explained, in about 15 e-mails and on the telephone with me on many occasions, his circumstances, his longing to meet and hold his son and how badly he felt when he was deprived of his child. He explained that he couldn't go to court; he didn't have the stomach for such a family law case and didn't know the first thing about family law or how to go to court. He explained that due to his job, he didn't have the time to fight a prolonged court battle in any case. His job commitment meant that he had to move quite a distance away in the near future and he had no choice but to move. He expressed his deep feelings of love for his son, whom he had not met and who was being kept from him. He was told by the government that he could not be on the birth registration without the mother's permission even if he had DNA evidence showing that he was the child's biological father. I will refrain from disclosing to this committee and the public the names or identities of the people involved.

In one of his last e-mails to me, he stated, "I find it hard to get by with such heavy burdens on my mind. This is quite the situation for a man of 21. My son's name is" such and such, or something along those lines, "and was

born probably either in" such and such a hospital or this other hospital. "Both hospitals refused to give me any information about my son. His mother is" such and such, daughter of such and such. He went into details. "All the information I have was relayed by a friend."

After many frustrating attempts, he had to give up and go and do his job. He explained how immature this woman was and the problems he was having.

I can read further, but we're going to run out of time on this. The bottom line is that this loving father was a Canadian soldier who went off to war to fight for his country in Afghanistan, where he performed one of the most dangerous jobs of any member of the armed forces. He died fighting for this country—a country that wouldn't even allow him to be on the birth record of his son or for his son to be named after him, as determined by the Supreme Court in the baby-naming case of 2003.

Mr. Brian Ludmer: In the time that remains to us, I'd like to address the aspects of the bill that have application to what I'll call the typical high-conflict divorce. Imagine a set of raging emotions and parents not putting the interests of the children first—but not the extreme cases of physical abuse. Nonetheless, in these circumstances, we see many tactics deployed which are as reprehensible as some of the things that are being legislated against.

I'd like to leave the committee with some thoughts—and we'll follow up with a written submission—on what could be done to further constrain the parental behaviour that is so harmful. We're asking people to be at their best in circumstances where it's pretty well ordained that they're going to be at their worst, and therefore we need more rules.

As was previously mentioned, parental alienation is a form of emotional abuse of children. Simply stated, it is actions of a parent, usually in the context of a highconflict divorce, that either have the intent or effect, even if unintended, of undermining the other parent's relationship. In terms of the aspects of the bill that might touch on this, you're making welcome changes in terms of the restraining orders; there are many circumstances where they're needed. However, in the typical nonphysical-abuse but high-conflict divorce, there has been a tactic developed of false accusations for the purpose of getting a leg up in the typical custody battle to come. Simply stated, there is a solution: amend the proposed legislation to make a clear distinction between restraining orders focused on keeping the parents apart, and, even where justified, it should not extend to keeping the target of the restraining order away from the children. They may have hard feelings about the other parent and be misguided in dealing with them. That doesn't mean that for the next two or three years, until they clear it up, they don't get to see their children and the result of the divorce is pretty well preordained.

There are aspects of the bill which attempt to address what the explanatory note calls controlling, harmful behaviour, and they're very welcome. However, for those of us in the trenches seeing what's actually happening, the proposed amendments to section 28 of the Children's Law Reform Act are very unsophisticated and do not reflect the broad range of tactics that are happening out there. Therefore, they don't go far enough, and even those that are being proposed have technical flaws. I'll give you an example. There's a proposed prohibition on engaging in specified conduct while the children are with you, but today, a lot of the alienating conduct takes place particularly when the children are with the other parent, and it's conveyed by phone, by text message, by Internet. That's a clear technical flaw.

You're adding provisions to prohibit unauthorized change of names. Obviously, a child's identity is rooted in their name, and if they adopt the name of a step-parent, it's going to undermine the name of their former parent. But those changes are only directed at legal changes of name, which are difficult to do today even under the current legislation, so you need to go further and deal with practical changes of name—in other words, registering the child for a sporting or other activity using a new name, or registering the child at a new school using a new name, even where legally the child's name has not yet been changed.

What's missing in terms of what you're proposing to do: There are unproclaimed amendments to the Children's Law Reform Act, sections 20 through 29, that you need to move on. There needs to be further protection for custody and access prior to the first court order. We're encouraging people to move out of the house to control the hostility, and yet we all know intuitively that the one who moves out is at a significant disadvantage in the custody battle to come. So we want to encourage people to disengage, but they're left defenceless with vague promises that, "Don't worry, we'll work out the custody arrangements in future," and then it never comes. All of a sudden, it's three years down the road.

The system is plagued with delays, and there's developing case law on status quo. So the parent who takes the mature view and moves out of the matrimonial home to control the hostility suddenly finds herself, three years later, facing a legal argument that they've acquiesced in the current status quo and they're out of luck in terms of trying to get meaningful time with the children.

Even where there's an access order, enforcement of access orders is very problematic and needs to be addressed in the legislation—

The Chair (Mr. Shafiq Qaadri): You have one minute, Mr. Ludmer.

Mr. Brian Ludmer: Thank you.

Lastly, in section 24 we have a definition of "best interests of the child." You can do a world of good by adding one more—there are eight criteria—which is, "support for the child's relationship with the other parent."

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Ludmer, and thanks to you as well, Mr. Wilson, on behalf of the committee for your written submission on behalf of the Canadian Children's Rights Council.

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CHANGING WAYS LONDON ABUSED WOMEN'S CENTRE WOMEN'S COMMUNITY HOUSE

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter to please come forward: Ms. Kate Wiggins, executive director of the Women's Community House.

Interjection.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos, for volunteering Mr. Zimmer's time. I'm sure he's much appreciative of that.

I'd now invite Ms. Wiggins to please come forward on behalf of Women's Community House, reminding you that you have 20 minutes in which to make the presentation. I would invite you to please begin now.

Ms. Kate Wiggins: I'd like to thank you for the opportunity to speak this afternoon. I'd like to thank you all for attending so patiently to all of our remarks—I've been here for a couple of hours; I know this room is a little warm—and I appreciate your attention.

I'm here representing three organizations. One is Changing Ways. I am the president of that board. Changing Ways is a program that provides services to abusive men and their partners. I'm also representing the London Abused Women's Centre, which is a feminist organization that provides counselling for women in the community of London. And I'm representing my own organization, Women's Community House, which is the largest high-security emergency shelter for abused women and children in this country, providing 67 beds plus 25 apartment units for second-stage housing.

I've been doing this work for seven years, but I've been in my community for the last 30, serving women and children.

I'll just read my remarks. I've handed in my submission, but I'll just read what I have here.

Changing Ways, the London Abused Women's Centre and Women's Community House support the overall direction of the amendment of Bill 133. However, we are concerned by the seeming lack—

Interjection.

Ms. Kate Wiggins: Yes, I guess I'm blowing you out of the room. Sorry.

However, we are concerned by the seeming lack of recognition of the context of woman abuse within current legislation, an omission that exposes women and children to continued violence.

We believe that all legislative policy reforms should be based on a comprehensive understanding of the significance of domestic violence in all child-related proceedings. Woman abuse is highly relevant to the determination of a child's best interests, and the principles regarding women's and children's safety must be paramount in any policy-making and judiciary process.

Around custody and access, it's often not in the best interests of the child to be placed in the custody of a

parent who has perpetrated acts of abuse against the child or a parent of the child. The principle of encouraging children to have maximum contact with both parents is problematic, as shared parenting means that abusive men have continuing power and control over their children and their children's mother.

In terms of recommendations, the history of abusive behaviour needs to be considered, as well as the impact on children of witnessing that violence, even if they are not victims themselves.

The primary caregiver of the child, if not posing a risk to the safety of that child, should be awarded custody. With a history of woman abuse, a parent who has perpetrated domestic violence should be denied access to his children except in a supervised capacity to ensure the safety of the child and mother.

The courts need to consider domestic violence as a mitigating circumstance for women fleeing from the matrimonial home, and consideration should be paid to her safety and that of her children in any decision of custody or access.

We support appropriate intervention programs, like the Caring Dads training offered by Changing Ways, that focus on the impact of exposing children to woman abuse and the responsibility of fathers to be safe for their children.

Restraining orders and legal aid: Restraining orders are often difficult to enforce, with minimal consequences, and the onus is still on women to call the police if a restraining order has been breached. Women are often at a disadvantage in obtaining legal counsel, and also may be subjected to inferior counsel due to lack of information about woman abuse among professionals and limited hours for preparation.

Recommendations: There's a need for additional monitoring and accountability of all restraining orders, especially in high-risk situations, with greater integration between policing and judicial units so that information that may place a woman at additional risk is shared immediately. I think this is captured in the changes that you're suggesting.

The qualifications for legal aid need to be expanded to consider the dynamics of woman abuse and the potential resulting lack of income for women, despite ostensible family net worth.

Women need to have access to appropriate lawyers who understand and are sensitive to woman abuse, with expanded qualifying hours to deal with their timeconsuming family law cases.

In terms of confidentiality, currently identifying information of the victim is routinely released. An example of this is the name change permission form, in which both parties are required to sign their consent. This significantly increases the risk to the abused woman, and compromises her safety and that of her child.

Our recommendations: We strongly recommend that no information that could identify the city or residence of a victim of domestic violence be included in any joint

forms.

In terms of kinship care, while we support the idea of kinship care for children in the midst of the upheaval of domestic violence and custody and access issues, we have great concern about children being awarded to the parents of the abuser, a decision that creates a power imbalance for the victim and increases her risk of unwanted contact with the abuser. In the case of a restraining order against her, visiting her children while the abuser is present may result in her incarceration.

Recommendations: We recommend that, with the exception of extreme extenuating circumstances, no child be placed with the parents of the perpetrator, but other suitable arrangements be made. In the event that a child is placed with his or her paternal grandparents, there needs to be close supervision and direct accountability for the safety of the victim and her ability to visit with her children without fear of contact with her partner and without any interference by the parents of the abuser.

In terms of risk assessments: Risk and lethality are dynamic. This is presently not captured by the courts and places women at substantively higher risk as circumstances for the perpetrator spiral downward with separation and altered access to his children.

Also, assessments are often conducted by ill-trained professionals without any comprehensive knowledge or understanding of the complexities of woman abuse.

We would strongly recommend that policies be put in place that adequately capture the dynamic nature of the risk for abused women, with ongoing risk assessments and careful monitoring of perpetrators. The implementation of common risk assessment tools, utilized by qualified assessors well trained in woman abuse, can significantly protect women from further abuse, increasing their safety and well-being.

We recently received some money from the city of London, with the London Police Service, at Changing Ways to set up a program that will monitor men to ensure increased safety and will also provide supports to abused

Judiciary training: This is sort of like some kind of sacrosanct cow that does not get spoken about. But anyway, currently, a wide range of professionals, ranging from lawyers, judges and mediators to staff at supervision facilities, are inadequately prepared to deal with woman abuse and the ways to properly support abused women. In Ontario, in the bar admissions course, lawyers receive only a two-hour lecture on domestic violence.

Our recommendation would be that there needs to be comprehensive training for judges and lawyers on the dynamics of domestic violence. In addition, the judiciary needs to create greater court accountability and offender

responsibility.

In terms of pensions: I've heard a lot about pensions this afternoon. It's been very informative. Abused women are very often at a very distinct disadvantage with spousal pensions, as many have cared for their children rather than working outside the home. In many cases, victims of domestic violence have been pressured to stay at home by their abusers in an attempt to isolate them and control their movements.

Our recommendation would be that in the pension regulations, consideration be made for women who are victims of domestic violence, and the extenuating circumstances which have prevented them from creating a financial legacy.

In terms of net family property, while we generally support the amendments to the definition of "net family property," we are concerned that the many women who stay at home to raise their children, either through choice or coercion, are placed at a distinct disadvantage in the calculation of assets.

While there's a reasonable expectation that women will take responsibility for their part in building and creating financial opportunities after separation and divorce, we recommend additional time and resources to help build women's skill base, in addition to recovering from the trauma and legacy of abuse, in order to empower them to take their place as full and contributing members of society.

In terms of recalculated child support, we strongly support the mandatory provision of financial information on an annual basis. This relieves women of the onerous task of pursuing it on their own and often not receiving increases to the level of child support to which they and their children may be entitled. However, we request a little bit of clarification around the child support service that will do this.

Recommendations: Additional details about the child support service are needed. For example, who is providing this service, what is the process, and is it available for all women, regardless of economic bracket?

1650

Our conclusion is the following: The amendments to Bill 133 are significant and welcomed, but we believe there is a critical need for these amendments to be seen through the lens of woman abuse and the devastating repercussions that follow from a system that is unprepared and lacking in a comprehensive understanding of domestic violence. We all have a part to play in ending woman abuse, and every increment of support empowers women to live their lives in freedom and peace.

The Chair (Mr. Shafiq Qaadri): We have about three minutes per side, beginning with Mr. Ramal.

Mr. Khalil Ramal: Thank you very much, Kate, for your presentation. I know you are very expert in this field, and you bring to this table and to this committee a great wealth of information and expertise.

I know you spoke in general, and I'm not sure if you listened to all the people who spoke before you, but you definitely listened to some of them.

We're talking about Bill 133, and I know you talked about different recommendations and offered your own point to us and to the committee and to the government. I know there are big divisions about pension, about restraining, about children, many different aspects. Of course, no bill can please everyone, but you know it's our intention, our goal, our aim and end to make the whole process very clear, less complex, less costly. So do you think, if we pass that bill as it is with some kind of

modifications from the floor, from the opposition, we'll make it better, easier and clearer?

Ms. Kate Wiggins: I think to a certain extent it will do that. My issue has always been, the devil is in the details. What the legislation says is not necessarily what gets enacted at the ground level.

I would cite a very clear example of this, and that would be the changes to the housing regulations, which were supposed to make it much easier for women who required special priority status and urgent status to get on housing lists and to get housing. Rather than that being an easier process, a clearer process, it's a nightmare for women. I see that on a daily basis because of the clients that I serve, because of our residents, our tenants at second stage housing—it's been horrendous.

There are more barriers and more obstacles to getting special priority status than there ever have been before, even though the legislation appears to be so patently clear: You require a letter with this kind of information, and previously that would have cut it. We write letters for women to get housing, to get special priority status so they don't wait for a long period of time.

Now, what this means to myself and my organization and women who are at risk in our communities is that our length of stay in the last year has gone from 21 days to 46 days because there isn't social housing in the community of London. Rather than deal with the issue, and I know it's going to be dealt with now since we've had this marvellous announcement, what our community has done is created more barriers for abused women, and that's unacceptable.

So for me, I think, substantively, these changes are a good idea, but it all depends on how it is interpreted and it all depends on the ability of people working on the ground to actually manage; whether it's the police services, the court systems, shelter workers—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Ramal. Ms. Elliott.

Mrs. Christine Elliott: I can't tell you, Ms. Wiggins, how helpful it is to have somebody with your knowledge and experience come and speak to us about this bill, because we're trying to work through a number of different areas. I'm particularly interested in, obviously, the domestic violence aspect of it.

I have two quick questions: Do you think it's necessary for the Domestic Violence Protection Act to be repealed in order to proceed with this legislation? Because it would seem to me that it's complementary and adds an extra level of protection for women. Secondly, do you think that we can achieve what we really need to do within the context of changes to the Family Law Act, or would you prefer a separate, stand-alone domestic violence protection statute?

Ms. Kate Wiggins: That's a good question or two. Well, I actually do believe we do need something in addition. The Domestic Violence Protection Act makes sense to me. There needs to be something that clearly addresses the issues as they relate to domestic violence or to woman abuse. And the second part of your question?

Mrs. Christine Elliott: It was about the existing Domestic Violence Protection Act being repealed as part of this bill going forward, which would allow emergency intervention orders, which isn't addressed by Bill 133.

Ms. Kate Wiggins: Yes, so personally I would prefer that there be something separate as well as the amendments suggested with Bill 133.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Elliott. Mr. Kormos.

Mr. Peter Kormos: Thank you, Ms. Wiggins. One of the frustrating things is that this type of legislation doesn't get revisited every couple of years; it's once every 10, 15 years, and that means that it's very critical that as much work as possible be put into making it right. We've got a most interesting—there's a copy over there for folks who want it—submission by some 12 provincial Family Court judges. I'm not aware of judges—the judiciary—ever commenting on legislation, especially legislation that directly affects them.

They talk about this mostly in the context of their custody issues. They say, "We are convinced Bill 133 does not provide a workable system." These judges decry the absence of resources in the Office of the Children's Lawyer and they decry the proposition that—they say that "an investigation by the children's lawyer is, in our view, the clear solution to the problem of custody cases where parties are unrepresented, or where an application is unopposed."

They once again point out that lawyers—when lawyers are available in Family Court—who are experts in that area provide a very important role, but very few lawyers want to be in Family Court.

Ms. Kate Wiggins: Well, they're available, if you have the resources to afford them.

Mr. Peter Kormos: I know it's a whole lot, and what I'm trying to do is get the judges' position onto the record—they won't be here to talk to it—but I really would like to hear if you have any comments in response to what the judges have said.

Ms. Kate Wiggins: You don't want to get me started on judges. I'm sorry.

Mr. Peter Kormos: Okay. You and I could spend a lot of time. I've been there, done that.

Ms. Kate Wiggins: I don't want to go there. If the courts are complaining about a lack of resources, they ought to come and hang out with me and my brothers and sisters behind me, because the system, in my personal opinion, is broken. The system is really not a system; it's a series of disconnected pieces that I don't think work at all to the benefit of abused women. I see that on a daily basis.

I spoke with the women in shelter when I heard about this bill and, by and large, they were thrilled. As flawed as it is, they were thrilled because it's something, and women who are in shelter are in shelter because they're afraid and they really have nothing. They lack money; they lack good legal counsel; they can't get legal aid certificates if they're above the threshold; they have to figure out how they're going to live on Ontario Works.

They have nothing. I can't imagine anybody, really—and I love the work that I do—who would choose to come into a shelter unless they absolutely had to.

I think we've got a long way to go to create a system that actually works on behalf of the women and children who inhabit it, and I do believe that some of the recommendations that I have been made will be helpful, but there's a whole lot of work that needs to be done and a whole lot of training—

The Chair (Mr. Shafiq Qaadri): With regret, Ms. Wiggins, I'll have to intervene, but I thank you for your presence and your deputation on behalf of the committee.

CENTRE FOR RESEARCH AND EDUCATION ON VIOLENCE AGAINST WOMEN AND CHILDREN

The Chair (Mr. Shafiq Qaadri): I would now invite Ms. Barbara MacQuarrie, community director for the Centre for Research and Education on Violence Against Women and Children.

Ms. MacQuarrie, I invite you to please begin your 20-minute presentation now.

Ms. Barbara MacQuarrie: Thank you for the opportunity to speak today. The Centre for Research on Violence Against Women and Children is located in the faculty of education at the University of Western Ontario. I'm just going to read my submission, and if you have questions afterwards, you can ask me.

Abused women and their advocates in Ontario have long been frustrated by the restraining order legislation provided under family law. A quick review of the literature available on the website of the Centre for Research and Education on Violence Against Women and Children revealed several studies that drew similar conclusions. These conclusions are: Restraining orders are often confusing and often contain conditions that are difficult to understand. Police are often reluctant to enforce the orders and the consequences to an abuser who has breached a restraining order are frequently minimal. As a result, women and their children do not get the safety they deserve and abusers are not held accountable for their actions. Your citations are below that.

1700

The concern that "civil [restraining] orders from the Family Court are not taken as seriously and may not be enforced by the police" was repeated in reports from the Domestic Violence Death Review Committee to the chief coroner in 2004, 2005 and 2006. The 2004 report notes that, "Unfortunately, a number of the tragic cases that result in fatalities occur when the perpetrator is subject to a bail order or the victim has obtained a restraining order." Deborah Sinclair's 2004 Overcoming the Backlash report also details the deaths of women who were killed by current or past intimate partners despite having restraining orders against them.

As early as September 2000, the Ontario government announced its intention to make breaking a restraining order a Criminal Code offence. The 2004 domestic vio-

lence action plan repeated the promise, stating, "Based on consultations with justice and community partners to be held in early 2005, civil protections for abused women will be improved, including improvements in restraining orders and enforcement of breaches."

The government has followed through with this process, and on November 24, 2008, Attorney General Michael Bryant introduced Bill 133, which contains extensive revisions to restraining order legislation as well as a number of other important law reform initiatives.

Prior to introducing this legislation, the Ministry of the Attorney General addressed the need to ensure that restraining orders get from the court to the police as soon as they are issued. The ministry has worked with police through the Ministry of Community and Social Services so that police services treat domestic violence entries as a priority. MAG is also piloting a restraining order index to ensure that police receive restraining order information quickly and in a more streamlined fashion.

Bill 133 addresses other outstanding concerns about restraining orders. As noted above, one of the biggest difficulties with restraining orders is effective enforcement. At the present time, a breach of a restraining order is punishable under the Provincial Offences Act. Bill 133 would make a breach punishable under the Criminal Code. A man who breaches a restraining order could be arrested by police, charged with a criminal offence and held for a criminal bail hearing. His case would then proceed in criminal court, and if he is found guilty, he would be liable to potentially more serious penalties.

I understand that the legislation is gender-neutral. I am talking here from the perspective of working with and for abused women, just to make that clear.

The Family Law Act currently restricts restraining orders to spouses, former spouses or people who have cohabited for at least three years. Bill 133 expands this to include people who have lived together for any period of time. This will ensure that women, no matter how shortlived their cohabitation arrangement, have access to the safety of a restraining order.

Under the new provisions of Bill 133, a woman will be able to obtain a restraining order by making an application to the Family Court where she can show that she has "reasonable grounds to fear for ... her own safety or for the safety of any child in ... her lawful custody"—subsection 46(1). This language requires that the person applying for the restraining order show some evidence of her need, which should help protect against malicious restraining order applications being brought by abusive men, but does not require complicated evidence and maintains the "on the balance of probabilities" standard of proof.

Bill 133 requires that all restraining orders appear on a standard form order, which will make them more easily understood by women and will simplify enforcement by the police.

The bill also sets out specific provisions that judges can include in a restraining order:

Under section 46:

"(3) A restraining order made under subsection (1) shall be in the form prescribed by the rules of court and may contain one or more of the following provisions, as the court considers appropriate:

"1. Restraining the respondent, in whole or in part, from directly or indirectly contacting or communicating with the applicant and any child in the applicant's lawful

custody.

"2. Restraining the respondent from coming within a specified distance of one or more locations.

"3. Specifying one or more exceptions to the provisions described in paragraphs 1 and 2.

"4. Any other provision that the court considers appropriate."

Bill 133 also introduces new provisions to limit inappropriate behaviour by people involved in Family Court proceedings: that "the court may also make an interim order prohibiting, in whole or in part, a party from directly or indirectly contacting or communicating with another party, if the court determines that the order is necessary to ensure that an application ... is dealt with justly." This should be of great assistance to women whose partners use the Family Court proceedings as an opportunity to engage in ongoing legal bullying. In cases where the judge makes this order and it is breached by the abuser, it would provide good evidence to support any application the woman might decide to make for a restraining order in the future.

In summary, I am in support of Bill 133 because the new restraining order regime will expand the eligibility of who may apply for a restraining order to include all couples who are cohabiting, regardless of the length of time of cohabitation; strengthen enforcement by prosecuting breaches under the Criminal Code; introduce a clear evidentiary test which judges must consider before granting a restraining order, which should help protect against malicious restraining order applications being brought by abusive men while maintaining the "on the balance of probabilities" standard of proof and therefore not requiring complicated evidence; and provide the authority for a court to include specific terms in restraining orders in order to restrict the respondent's contact with the applicant.

Bill 133 also contains changes that will increase the safety of children, particularly in cases where non-parents are seeking custody, by requiring evidence that affirms an applicant has the capacity to provide appropriate parenting and by providing judges with greater powers to control inappropriate or harmful behaviours by parents.

Bill 133 makes it mandatory to provide financial information on an annual basis, thus relieving women of the onerous task of pursuing it on their own or of not receiving increases to the level of child support to which they may be entitled.

The government also intends to create a plainlanguage guide to help potential applicants understand the process for obtaining a restraining order under the new regime. This will be a useful resource for all those who are applying for a restraining order, but particularly for the ever-increasing numbers of women who proceed through Family Court with no legal representation.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacQuarrie. We have about three minutes or so per side, beginning with Ms. Elliott.

Mrs. Christine Elliott: Thank you very much, Ms. MacQuarrie. I think we're all pleased with the provisions of Bill 133 that make it easier to obtain restraining orders for women and to have them enforced. I do have a concern, however, about the ability, in terms of timing, to get the order. There's been some suggestion that there should be the ability to apply for emergency intervention orders, that it's not just during court times that these sorts of situations arise. Would you think that that would be an important thing to retain within the legislation that is going to be repealed to be replaced by Bill 133?

Ms. Barbara MacQuarrie: I do think that the ability to get restraining orders on an emergency basis is

important, yes.

Mrs. Christine Elliott: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Elliott. Mr. Kormos.

Mr. Peter Kormos: I suppose, to that end: how, in this proposed regime? Because this same Bill 133 is repealing the Domestic Violence Protection Act, which had a provision for ex parte, 24-hours-a-day, seven-days-a-week restraining orders, and I, for the life of me, don't know why the government would repeal that rather than

work on implementing it.

Ms. Barbara MacQuarrie: Personally, I see change as a process. What I have before me is better than what we have right now. The Domestic Violence Protection Act was on the books for a long time and nothing happened with it, so I'm choosing to support some legislation that is going to give us something better than what we have today, with the idea that we're going to have to continue working on the areas that are inadequate.

Mr. Peter Kormos: This bill is going to pass. I can guarantee that without hesitation. This bill is going to pass, if only because it's a majority government, but at the end of the day, I suspect the opposition parties won't find anything so distasteful in it that they'll vote against

it

Having said that, we don't get too many kicks at the can. This type of legislative reform doesn't happen that often. It's a 10-, 15-, 20-year event. Shouldn't we be striving for a little more this time around, or should we wait another 10, 15 or 20 years?

Ms. Barbara MacQuarrie: I'm being realistic, again, about what's on the table. This is an opportunity that I see to put some improvements in place, and that's why I'm supporting it. I'm not suggesting that we should all accept that this is the end of the process. It's not.

Mr. Peter Kormos: Okay. Thank you kindly.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos. To Mr. Ramal.

1710

Mr. Khalil Ramal: Thank you, Barb. It seems like today's a London day. So many people, from lawyers to

community activists, researchers and many others spoke in this place regarding this issue.

I know that you've been working very hard for many years in the research field and also in the community to protect women and trying to understand the whole atmosphere around this issue, in particular the laws and rules that regulate and conduct activities in this area. I know you support this bill; you spoke and gave us some suggestions. In your opinion, will it make it easier and clearer for people to move on, and less costly, if this bill passes?

Ms. Barbara MacQuarrie: I believe it will, and that's an opinion based on my consultations with people who know the law better than I do. I have consulted, and that's the consensus of the people I've spoken to. Like I said, I believe it's a step in the right direction. I believe it's important that we improve what we have in place. But I also believe that we need to continue reviewing what happens when we put new legislation in place, and we need to be in a continuous process of monitoring and seeing how we can do better. I'm assuming that that commitment is there; I hope it's there.

Mr. Khalil Ramal: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. MacQuarrie, for your presence, deputation and written submission on behalf of the Centre for Research and Education at the University of Western Ontario.

THE ADVOCATES' SOCIETY

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter, Ms. Nicoll, of McInnis and Nicoll, on behalf of the Advocates' Society, to please come forward.

You've seen the drill and protocol. You have 20 minutes in which to make your presentation. I invite you

to begin now.

Ms. Judith Nicoll: Good afternoon. I am here on behalf of the Advocates' Society, a professional organization of 3,800 lawyers in the province of Ontario. While the Advocates' Society does not encompass only family law lawyers, it is a testament to how important the organization views family law issues that they have chosen to make this submission today.

In general terms, the Advocates' Society supports the draft legislation that has been put forward, provided of course that there is a properly funded and resourced set of tools that go along with the proposals. In particular, we welcome the opportunity for easier access to various elements within this legislation; for example, under the various provisions that allow for the change-of-name provisions under the Vital Statistics Act and the Children's Law Reform Act. This gives an opportunity for people not to have to go through the same multi-layered steps that have previously been involved when one could only proceed under the Vital Statistics Act. Being able to do it in conjunction with a declaration of paternity allows people to make these changes without going through the additional step.

Hopefully, it will also provide a greater likelihood that the general public will be aware of their rights with respect to getting their name onto a child's birth certificate. I can tell you, as a practitioner who has been in the family law field for the past 25 years, that many people simply aren't aware what their opportunities are to get that name onto the birth certificate, and in many instances where there's a dispute, whether it's about paternity or just about the child's custody—particularly where parties aren't cohabiting—there is a general assumption that there's a default position with no rights available to the other party. This gives a greater opportunity for both names to be on the birth certificate to reflect the true parentage of the child.

With respect to the custody provisions in the Children's Law Reform Act, I have had an opportunity just briefly to review the submission of the judges where they're very concerned about the ability for a court to actually oversee the very detailed information requests this new legislation would allow for. Certainly, from our perspective, we are concerned about the administrative nature of a lot of this stuff: how all this information will get before a court; how it will be handled; whether or not there will actually be other privacy issues that haven't been contemplated here where mistakes could be made, such as people with similar names—that sort of thing. But the intention is good, and we're going to try to fill those gaps we've seen that have resulted in tragedies in this province in recent times.

The other thing that appeals, as a practitioner in this area of the law, is the concept of obliging people at the first instance to deal with a parenting plan; not some amorphous "Since I want custody, I ought to have it" but rather an opportunity for a person to have to specifically turn their mind to what their plan is for the care of that child. I don't know how many of you have ever actually seen some of the applications that are presented for custody and access matters in this province, but they're often quite weak because someone wants custody or access but there are no details as to what is contemplated in that. Now, the legislation purports to set out in greater detail what the expectations are. So the hope would be that at a front-line entry basis into the system, whether a person is represented or not, there is a greater recognition that one has to be specific about what they're looking for when seeking this kind of relief from a court.

Hopefully, the development of the demand for that information will include getting some people to pause and reflect about making some of these claims, which can sometimes—I'm not saying often—arise really more from a knee-jerk response that because a claim has been made by the other side, they must similarly make a claim. A lot of time is wasted in our system where people ask for everything in the absence of a plan and without any real expectation that this is what they'll ultimately be able to do for the most practical of reasons. I think it's very important to be trying to get people to assert their actual plans at an early stage in the proceeding.

With respect to getting records into the court system, I am concerned about the time this might take, particularly

in situations where there could be emergencies and one is concerned about getting a speedy remedy in a custody situation. I think we'll have to balance the need to make sure we've got the best information with the need for protection at an early stage, so there can be no doubt as to who has a custody order and who does not, even if it is on the most temporary basis, so there can't be people taking actions under their own steam without the benefit of a proper court order.

We are pleased with the expansion of the class of people to whom restraining orders will be made available. This has been a problem under the law, and we continue to have some problems with respect to matters such as exclusive possession orders, which haven't been available to the full gamut of people who potentially require such an order, but this is a very good first step to seeing the extension of this option for people who are in need of protection.

Practically speaking, some of the members today have asked questions about the speed with which one can get an order and how to get that order. The reality is that it's difficult to imagine any system that will always prevent tragedy. As we've seen with some matters that have arisen over the years, it is often difficult to predict the dangerousness of a situation, and in many instances we don't get a warning that something will happen. Having said that, the more teeth we can put into our system to attempt to avert any problems, the better, and we welcome that opportunity with these changes to the legislation.

With respect to the provisions that deal with whether or not a court can determine that a court has the capacity to determine that more files will be sealed and the information not made available in the public domain. I think that this is a good strategy for a number of reasons, not the least of which is, first and foremost, of course, the best interests of children, many of whom are seeing their lives played out in the courts these days and without even the most basic information being protected. I think that sometimes as lawyers there is a bit of a push and pull between this desire to have access to all information and to have the opportunity to see what precedential value a case might have, but the reality is that it's the end user here that counts and it is imperative that we protect the privacy of people wherever possible while making sure that in doing so we're not compromising either the integrity of the system or the safety and security of the people involved.

1720

One of the things that has been, I would submit, long overdue is the concept with respect to the annual disclosure of the financial circumstances in the child support provisions. As you are no doubt aware, the child support guidelines came into law in 1997. All these years later, we still don't have the system that was contemplated under those guidelines, which was to have provided for the recalculation, offices in every province and which was to have made this a simple system.

I believe at the time, in 1997, the guidelines were kind of touted as something that people could sit down at their kitchen table and figure out. As a lot of case law has revealed, that isn't exactly how it has worked out. Certainly some of the criticisms that I've heard about the amendments contemplate that they still don't deal with problems of imputing income and the self-employed person and that sort of thing. I'm not convinced that any legislation could deal with all of those problems.

I would put it to you that the fact of the matter seems to be that in these complicated times, there will always be compensation packages which defy one-size-fits-all. We've seen this problem with people who were paid in a variety of different ways, who received benefits in kind. So I don't expect that the legislation could have extended to cover those problems. But we have struggled with this notion that there hasn't been an annual obligation that has been written into the legislation, so that's an imperative step. The hope would be that there would be regulations. however, that would adequately provide for the recalculation office, whether it's a branch of the FRO or however else, but it really would avoid an awful lot of problems if people were able to understand that there's a new level of support, it's now this amount, and I don't have to bring a variation application in order to compel the receipt of that amount.

The consumers on the ground, as I see them, cannot comprehend that this is what's necessary. We have cases where money is sitting in the offices of the FRO that people aren't able to get because—this is where people are doing what they're supposed to. I know we always hear about people who aren't doing what they're supposed to, but there are lots of men who do not fall into the deadbeat dad category and lots of recipients who are doing what they're supposed to do. But the system sometimes fails them because of the hurdles over which people have to go. So in the absence of this recalculation order, you can't get your money out, even though it has been paid, which seems, of course, to be something of a bizarre result to the person who's paid their money in and the recipient who's waiting to get it.

So it is imperative that we get a system not unlike perhaps that which is provided for in Manitoba, which allows for a recalculation order to be made and in a very administrative kind of a way. Again, as I've said, it's not for everybody; it's not for people with complicated forms of income, and it does get more complicated when we get into section 7 expenses. I think that for people who don't deal in issues relating to the special or extraordinary expenses, it isn't just as simple as saying, "The child is in baseball; therefore, you pay your percentage and the other party pays the other percentage." There are thresholds that one has to determine, as to whether or not it's a reasonable and necessary expense within the context of this family's budget. So again it doesn't lend itself to an instant recalculation, but the guideline amount does, particularly for people who are salaried employees who have a T4 at the end of the year that one can look to have that exchanged and do the math from there.

We ought to live up to the promotional material that was around in 1997 that was going to allow this to be a

simple process for people because, truly, an awful lot of work could be spared within the court system if this was done.

We have a process in Toronto called the "dispute resolution officer" that's been in place for about the last 10 years. They deal largely with variation applications at the Superior Court on University Avenue. The bulk of the cases that come in there deal with people who are trying to figure out their child support with somebody sitting there. It's their lawyers who volunteer their time, but they have an enormous percentage of success in dealing with these matters because it's very straightforward. So we need to have a venue for people to be able to do this because of the massive amount of time that's being taken in the courtroom.

I know that another concern with any kind of amendment to legislation in family law matters is always—a starting point is that there aren't enough judges and there aren't enough resources, but a lot of judicial time is being spent on matters which need not be done by a judge. So I think it's imperative that we find ways as a community to streamline the process as much as possible. We see these amendments in this Bill 133 as a first step towards that.

I hear Mr. Kormos say again and again that we don't look at this stuff often enough, and I couldn't agree more. It seems like we've been doing this every year since the whole issue of family reform came into play in the 1970s. However, we have to work with what we've got. We are in uncertain economic times and to throw the baby out with the bathwater would be an extremely unfortunate result, because there are things here that can offer some relief to people in the immediate term. So, despite the efforts to have that perfect legislation, I think it is imperative that we work with what we have here.

If I might just speak lastly to the property provisions of the proposed legislation: We are pleased that the definition of "net family property" has been adjusted to take away the liabilities that exist in connection with the matrimonial home. There's quite a bit of debate as to whether or not we would have been happier had it also been considered that the date-of-marriage deduction for the matrimonial home had been considered in the legislation.

One of the problems from the perspective of some practitioners in family law is that if a party brings the matrimonial home into a marriage and that property remains the matrimonial home, one doesn't get to deduct its value. That presents a bit of an anomaly in our law because if I had \$100,000 in the bank, I could deduct that, but I couldn't deduct a \$100,000 matrimonial home.

There are varying views as to whether or not that serves an injustice to more women, but in any event, it hasn't made its way into the proposed legislation and that is seen by some amongst our ranks to be something of an oversight that we would have preferred was there because certainly in its absence it does compel people to either suffer some prejudice or, alternatively, to have to go once again to lawyers for domestic contracts to create their own regime so as to protect this asset that they're

bringing in. But at least, as I say, the fact of this new definition of the net family property allows for some relief there.

With respect to the pension, I'm not going to presume to comment in any great detail with respect to all of the provisions regarding the pension. I'll leave that to the actuaries and the pension plan administrators. The proposal is not without its complications, and certainly the actuaries have had plenty to say about that in terms of the method of valuation that's contemplated.

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The Chair (Mr. Shafiq Qaadri): You have a minute left, Ms. Nicoll.

Ms. Judith Nicoll: Thank you very much.

We are pleased, however, that the concept of the division is included in the proposed legislation. We commend to you the Law Commission of Ontario's report with respect to the proposed division of pensions, because it speaks to the valuation issues.

We also appreciate the tidying up of the issues related to jointly-held properties on death, which now confirm that any property that has passed because of a death is now calculated out of the equalization payment.

All in all, we look forward to these amendments being passed, provided, again, that there are adequate resources to make them work and to give the consumers in this province an opportunity to see a fairer division in their rights and responsibilities so that everybody can feel that they're being well served by the Family Law Act.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Nicoll, for your precision-timed comments and your deputation presence, on behalf of the committee.

BCH ACTUARIAL SERVICES

The Chair (Mr. Shafiq Qaadri): I'd now invite our final presenter of the day, Mr. Jocsak, actuary and president of BCH Actuarial Services.

As you've seen the protocol, you have 20 minutes in which to make your combined presentation. I invite you to begin now.

Mr. Jamie Jocsak: My name is Jamie Jocsak. I am an actuary, and I offer a slightly different perspective from those of my colleagues who spoke earlier.

I have only been doing this marriage-breakdown work for about two years. Prior to that, I worked for Mercer, which is the largest pension consulting firm in Canada. I worked as a pension actuary and I helped a lot of midsized and large private clients with their pension plans, both funding and administration. So perhaps I can offer a bit of guidance on the administration side of it, as to what I see with this bill.

I would like to thank you all for the opportunity to come here and speak. I congratulate the government on addressing this important issue and working to improve the divorce process for couples in Ontario. I believe, for the most part, you've done an excellent job with the bill. It's going to be provide much-needed flexibility by way of lump-sum transfers and eliminating the problematic "if

and when" arrangements. These problematic "if and when" arrangements are those situations where the couple wanted to split their pension later on and they created these really complex separation agreements, which is what Mr. Shena was referring to, in the sense that I know, as administrators, we would often spend thousands of dollars trying to figure out how to implement the separation agreement. I would point out that this is not a valuation issue. It was never a valuation issue. It's a separate issue, and this bill does address that issue.

I would like to start first by saying that I do agree with the comments of my colleagues Jay Jeffery, Kelley McKeating and Penny Hebert. As well, I want to start with two brief definitions that you probably already heard, but I just wanted to make sure that my comments are clear later on.

The commuted value of a member's pension benefit represents the value that they will receive if they are assumed to terminate employment. This is only the contractual rights the member has on termination, in accordance with the pension plan. Depending on the member's age and the plan, there are other benefits that don't fit into this situation. For example, sometimes you have a member who can receive an unreduced pension after 30 years of service. Now, say the member has 28 years of service and terminates. Often, this is not included in the commuted value because they didn't have enough service to vest in it. So the problem that you have is that the commuted value might exclude this benefit, assuming the member terminated, when in fact he or she is very close to gaining a right in this benefit. That would be left out of the spouse's share of the assets.

I have two recommended changes to the proposed legislation. My recommendations would bring the legislation more in line with the recommendations that were made by the Law Commission of Ontario in its recent report, which a lot of people have referred to.

In summary, I recommend that the net family law value of the member's pension benefits be determined differently for purposes of the Family Law Act and from the Pension Benefits Act. Under the Pension Benefits Act, in my mind, the main purpose of determining a lump sum is for the transfer to the spouse, and I believe the commuted value approach should be used in this case. However, under the Family Law Act, you're trying to determine the value that's appropriate for the family property, and I believe that the current approach, the hybrid termination-retirement approach—the mouthful approach—is the appropriate approach to use.

To clarify, the hybrid termination-retirement method is a method currently in use. Under this method, the value of the member's pension benefits is calculated under several different scenarios. What the actuary does is, you typically assume continued employment and assume retirement at various different ages, and you also provide an indication as to the value assuming termination of employment. The reason for this is that the value of a member's pension benefit is heavily dependent on what their individual intentions are. So if a member is likely to terminate soon, it's a very different value than if

they're intending to retire five or 10 years from now. So the value that is used for equalization purposes is the value that is considered the most likely, given the individual circumstances of the member.

I want to turn back to the Pension Benefits Act briefly, as far as the transfer. I'll explain why I believe the commuted value is the correct value to be using for that purpose. For one, and first and foremost, it doesn't make any sense to me to pay out benefits which have not yet been vested. So if the member were to terminate shortly after date of separation and we already paid out a benefit that never existed to the spouse, you sort of have a problem, so I understand that commuted value is a very important method to use for that purpose, and plenty of administrators have spoken to that.

In addition, as Mr. Shena mentioned, every plan administrator calculates commuted values all the time because members terminate all the time. This is something they can do very easily, so they do this all the time. If you were to try to implement something other than that, something that included some of these ancillary benefits that are invested, it would be very, very costly. I can say from my experience with private sector plans that private sector plan sponsors do not have a lot of expertise in this area, so they always turn to their actuaries, i.e. Mercer, to help them with this. If you implemented this, they would have to go to Mercer, which usually charges \$400 or \$500 an hour for actuaries' time to work through these calculations. It would be enormously expensive for private sector plans. I highly recommend you don't do that; you stick with the commuted value approach. As we can all admit, this is not the time to be loading plan sponsors with additional burdens, especially private sector plan sponsors.

I suspect actually that most plan sponsors would be in agreement regarding the commuted value for the transfer value, and I believe that's what Mr. Shena was saying. However, because you're using the commuted value for the transfer value, you have a bit of a problem, because if you use the same value for family law purposes, you're assuming the member literally terminated, and that's what you're valuing the benefit as. The problem with that is, it significantly understates the value of the member's pension in the case where there are significant unvested benefits that are not included in termination value and are most likely to be realized, such as generous bridge benefits and unreduced pension at, say, 30 years of service or something along those lines. Who is going to be hurt by this? It's the non-member spouse. The commuted value is sort of the minimum value you should assign to the pension, and then it goes up from there, depending on what the member's intentions are. By choosing the minimum value—which is what I suspect most plan administrators are going to push for, because they should be; from their point of view, that's the correct value—it's not the correct value for family law purposes and it's the non-member spouse who's going to lose out.

To illustrate why I believe the hybrid terminationretirement method should be used to determine the value of members' pension benefits under the Family Law Act, I'm going to provide a simplified example. I'm going to toss out income tax and a few of the other details, but the value is actually quite accurate and representative of a real case. Jane and John have been married for 35 years. Jane raised four children and only worked low-income part-time jobs during the marriage; she has no pension of her own. John made a very good living and has a large DB pension of around \$80,000 per year at the date of separation, and his 30-year career was completely during the marriage.

John's pension is a private pension plan and, as is common with private sector pension plans for members who terminate prior to age 55, all he's entitled to is his \$80,000 pension, beginning at 65. However, if he were to work past age 55, he then becomes entitled to retire at age 60 with an unreduced benefit and generous bridge benefits. A lot of private sector plans work like this because they try to reward long-service employees who retire from the plan and don't quit prior to retirement. So often, you see a big increase in value when you pass a threshold, such as age 55, to reward these long-service employees.

Let's suppose, however, that John is 52 at the date of separation, so he hasn't met that threshold. The plan administrators will snap their fingers, they'll pump out the commuted value, and I can tell you that it'll be around \$500,000 and it will be based on an \$80,000-a-year pension payable from age 65. What about the situation where he was assumed to work past 55? Say that John has a very secure job, he has no intention of terminating and his real intention is to work to age 60 and take advantage of that unreduced pension and those generous bridge benefits. What would the value of his pension be? It pops up to around \$800,000. So the value of taking that pension early at age 60 and the bridge benefits are around \$300,000; it's almost 70% of the termination value.

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So the question is, "What is the fair value under the Family Law Act?" The problem with the way the legislation is written right now, is you have to choose one value. Okay, so let's try to choose one value. What will work? Let's choose commuted value. Let's put it at \$500,000. What's the spouse's share? It's \$250,000, so she gets a quarter of a million dollars for the pension. Well, what about the situation where John is secure in his position, he works to age 60, he retires with his great unreduced pension and his bridge benefits? Effectively, I can tell you, to put it in simple terms, if you look at the \$250,000 Jane will receive when she tries to retire at age 60 as well, her pension will be roughly half of what John's pension would be with respect to the marital period, and that was a pension that was supposed to be split equally. It doesn't seem very fair to me.

Let's look at the other hand, which is if John intended to leave his employer and was almost certain to terminate prior to age 55. Then the commuted value is a fair value. It's representative of what's likely to happen to John. However, what happens if, because of the previous

situation, the Attorney General's office decides to come up with some magic number that takes into account some of these ancillary benefits? So they have their magic formula and it pops out a value somewhere in between: Let's say \$700,000. The problem with that is that then Jane gets \$350,000 paid out to her; John terminates. Now we have a problem, too, because John's got \$150,000 left and Jane's off with the rest of it. All of a sudden it's switched the other way, so now who's at a disadvantage? John's got a major problem.

So you're thinking, how exactly do we deal with this? The reality is either of just two possibilities, but as pension actuaries we see these situations every day. The range is quite enormous in pension plans, and that's actually by design of a defined-benefit pension plan. The beauty of defined-benefit pension plans is that they adapt to people's lifestyles and you can't actually value a defined-benefit pension plan without knowing what the person intends to do. That's a defined-benefit pension: defined contribution or the alternative.

One thing I want you to notice from this example is that we're not nitpicking over a dollar here or there; this is a major, major issue. The other thing I wanted to point out is that the hybrid termination-retirement method, which provides several different values, is not this needlessly complex method created by actuaries for fee generation. It is needed, because in a defined-benefit pension, really the value depends on the individual's intentions. You need several values to correctly quantify what the true value is, because there is not one value for a defined benefit pension plan.

From my experience with Mercer, I wanted to point one other thing out. There seems to be this belief that there's this one value to value your pension. Mr. Shena keeps talking about, "We have the value." But what he's talking about is commuted value. When you read in the news, you hear a lot about solvency problems with pension plans. The solvency liability is basically the sum of the commuted value because everybody is concerned with what will happen if the plan terminates. But in fact, that's not the only funding basis a sponsor has to fund on. They have to fund on a funding basis, assuming it's ongoing as well. How does a plan sponsor do that? Lo and behold, they create many different liabilities, depending on when the person is assumed to retire. The way they get around the problem we're facing is they choose what the average plan member does and they assign that to it, and then they make sure, in addition to the solvency liability, the commuted value, they have enough funded so that they can provide for these additional ancillary benefits that will become vested in the future.

You can ask any pension actuary, as I was—if a plan sponsor asked me: "The amount of fund we have in the fund for you is not correct; it is wrong." I will guarantee you that 100%. What I can say is, over the entire population it is correct. We have a problem here because we're trying to do it for one person. We don't have the law of large numbers to help us out here. We're stuck

with one number, "so stuck with one number" means that you have multiple values, and any plan actuary will also tell you there's no such thing as one value for your pension. So for those of you who are a member of your pension plan, you don't have one value for your pension plan; it will depend on when you choose to retire.

To be clear for my recommendations, Jane could receive up to \$250,000 transferred into her RRSP, regardless of what you choose as the value. That's the max we should transfer, because that's the commuted value. We don't want to go above that. But in reality, it could be a bit higher because we decide that he's most likely to retire at age 60 or something like that. The difference would have to be made up in the equalization payment.

This is actually sort of the status quo, because for plans that aren't part of the Ontario Pension Benefit Act, such as federal civil servants, they already get transfer values right now, and this is being done currently. It's not a problem, because this payment would probably affect a large part of the equalization. So the system actually works fairly well.

The second comment I have: As a pension plan actuary and administrator previously, my concern was for the benefits security of the members. Some plan administrators have come in here and made comments as to what should be paid out and what they're willing to do, and I think that's very helpful, but then they step over into the realm of what's the appropriate value for family law purposes. I don't understand why they're making comments in that regard. And the fact that they're making the suggestion that it should be commuted value? Commuted value disadvantages the non-member spouse and is best for the member spouse. It seems a little bit questionable to me. So, personally, my point of view is that I would certainly view the recommendations of plan sponsors who are protecting their own members at the disadvantage of the non-member spouse with a little bit of a question, and this is not an obscure issue.

In summary, I'd like you to look at Jane and John and think about somebody you know who's in that position. In fact, it was modelled after my parents. If my parents had terminated in their early 50s, this would have been them. If this law is passed with the commuted value or one single fixed value—I suspect it will be the commuted value—my mother, or Jane, would be really left out in the cold. She would get \$250,000 and be told, "Good luck. That's what you're entitled to. We've decided that."

Individual circumstances cannot be effectively addressed in any formula-based approach that could be prescribed by regulation. I'm trying to make that very clear, because the value of a defined-benefit plan depends on your intentions. So do not leave this to a magic regulation to go with this pie-in-the-sky, one-value-fixes-the-whole-problem.

Now, to answer the question as to why I think they've gone this way, I think they are going after the pie in the sky. I think they want this to be a great simple system. You go to your plan administrator, you press a button,

the value comes out, and everybody's on their way. I would love that too. The problem is, defined-benefit pensions don't work like that. The sacrifice of having that simplicity is going to be people like Jane losing a lot of money. Now, considering that this is a lot of people's biggest assets, I don't think it's appropriate.

To sum it up, the reality is that defined-benefit pensions are far too complex, far too individual and far too valuable to be taking any shortcuts or trying to do it in this way. I feel that separating the two values as I have suggested will provide an acceptable solution for all parties. It protects the plan sponsors. In fact, they only have to calculate a commuted value when somebody wants a transfer. They only have to pay out commuted value. There's no risk to plan solvency. It protects the non-member spouse, whom I'm very concerned about right now with the way this legislation is going, because it's making sure that she has her say and that if she is the low-income earner and John has that beautiful pension coming up, she gets her fair share of that pension as well, which is extremely important. In addition, it allows the flexibility of lump-sum transfers and ends these ridiculous "if and when" agreements. I think it's the best compromise you can come to.

The next step is what they're trying to do, the one value. I just want to say, the one time an actuary can say with 100% possibility, it is not possible. The sacrifice will be major lack of fairness in the system.

Again, I'd like to thank you for the opportunity to speak with you today, and I'd like to open up to questions now.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Jocsak. We've got about a minute and a half per side. Mr. Kormos.

Mr. Peter Kormos: I concede right off the bat: Actuaries are smarter than lawyers. I surrender. Thank you.

You and I have talked before and you've been helpful in helping me get my head around this, but I think you bring a very important observation to this debate or this discussion. I think your words speak for themselves. What we've got to have is people from the ministry explaining why they are doing what they are doing and responding to your comments and the comments of your colleagues and presumably comments we're going to hear down the road. That's why it's very important that you're here today. Ministry staff will be reading the Hansard, and I want to hear from them.

Mr. Jamie Jocsak: So do I.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos. Ms. Broten.

Ms. Laurel C. Broten: Thanks very much for your presentation. I just want to examine the issue where there's another asset in the marriage, for example, the matrimonial home, which also sees a fairly drastic increase in value post-termination of marriage. A lot of family law lawyers will set up a circumstance where, "You keep the pension. I'll take the house," and I receive an increased value associated with my house because we

invested over a long period of time. How do you see that counterbalancing off, and do you still see, even in light of that asset exchange, which often happens—what's the circumstance for the wife, who usually takes the house because she has the kids?

Mr. Jamie Jocsak: The problem is, you're throwing a dart at a dartboard at that point, because what's the value of the house and what's the value of the pension? They may not even be close. That's a very concerning thing to do because of the fact that there is a way to value the pension by looking at multiple range, and saying, "What are you really intending to do?"—and that's the best way, the only way, to hammer down the fair value. So—

Ms. Laurel C. Broten: I'm not saying, "Throw a dart at the dartboard." I'm saying you have two values. You have the commuted value for the pension—say you have it at \$250,000—and you have the home value, current day, valued at \$250,000. You take your \$250,000; I'll take my \$250,000. Your \$250,000 is going to be maybe up at \$400,000 by the time you retire, but the house will also be up at \$400,000. In an increasing real estate market we might have been able to assume that; maybe not today.

Mr. Jamie Jocsak: It would have to be one heck of a real estate market in a lot of cases, because the increase over five years to go from \$500,000 to \$800,000 would require quite the real estate increase. In addition, the poor spouse who's stuck with the house has the maintenance costs, not to mention the risk of the real estate market. It's not exactly on the upswing, it doesn't look like, any more, so—

Interjection.

Mr. Jamie Jocsak: But the value of the pension, because it's a defined benefit, is guaranteed by the plan sponsor except for the one situation which we did speak about, which is where you have solvency concerns. That's another issue I should mention: What happens if you have a GM pension and it's a regulation? You can't—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Jocsak. I'll now have to invite Ms. Elliott, please.

Mrs. Christine Elliott: Thank you very much for your presentation, Mr. Jocsak. It's very clear and very compelling. I have to agree with Mr. Kormos that we really need, in light of the comments made by you and some of your colleagues, to understand the government's rationale for bringing this forward in the form that it is. I think there is the potential for significant harm to be done to the non-pension-holding spouse. So it is something, let me assure you, that we're going to be taking a serious look at. So thank you very much for your comments and being here today.

Ms. Jamie Jocsak: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Jocsak, for your presentation and deputation.

If there's no further business before the committee, the committee is adjourned till tomorrow.

The committee adjourned at 1750.



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Loi de 2009 modifiant des lois en ce qui concerne le droit de la famille

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STANDING COMMITTEE ON SOCIAL POLICY

Tuesday 24 March 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Mardi 24 mars 2009

The committee met at 1602 in room 151.

FAMILY STATUTE LAW AMENDMENT ACT, 2009 LOI DE 2009 MODIFIANT DES LOIS EN CE QUI CONCERNE LE DROIT DE LA FAMILLE

Consideration of Bill 133, An Act to amend various Acts in relation to certain family law matters and to repeal the Domestic Violence Protection Act, 2000 / Projet de loi 133, Loi modifiant diverses lois en ce qui concerne des questions de droit de la famille et abrogeant la Loi de 2000 sur la protection contre la violence familiale.

Le Président (M. Shafiq Qaadri): Chers collègues, mesdames et messieurs, j'appelle à l'ordre la session de travail du Comité permanent de la politique sociale. Nous nous sommes réunis cet après-midi pour continuer nous audiences publiques sur le projet de loi 133, Loi modifiant diverses lois en ce qui concerne des questions de droit de la famille et abrogeant la Loi de 2000 sur la protection contre la violence familiale.

ACTION ONTARIENNE CONTRE LA VIOLENCE FAITE AUX FEMMES

Le Président (M. Shafiq Qaadri): En ce moment, je tiens à souhaiter la plus cordiale bienvenue à M° Julie Lassonde de l'Action ontarienne contre la violence faite aux femmes. Je vous invite à prendre place à la table des témoins. Madame Lassonde, les règles sont très simples. Vous avez en total 20 minutes pour votre présentation et s'il reste du temps après votre intervention, les députés des trois partis politiques auront la chance de vous poser des questions.

Je vous demande de commencer par indiquer votre nom pour le Journal des débats, et le plancher est à vous. Bienvenue et commencez.

M^{me} Julie Lassonde: Bonjour, et merci infiniment de me donner l'occasion d'intervenir à l'Assemblée législative de l'Ontario en français. Ça me permet d'exercer mes droits en tant que francophone selon la Loi sur les services en français; je l'apprécie.

J'interviens aujourd'hui au nom de l'Action ontarienne contre la violence faite aux femmes. L'Action ontarienne est une organisation qui a été créée en 1988 et qui regroupe une vingtaine d'organismes qui aident les femmes qui sont aux prises avec une situation de violence. L'Action ontarienne a fêté ses 20 ans à l'automne passé.

J'ai six points principaux à vous communiquer aujourd'hui, donc je vous les résume très brièvement.

D'abord, l'Action ontarienne appuie le projet de loi 133. Deuxièmement, la protection des femmes francophones passe par l'accès aux services en français. Troisièmement, je vais faire des commentaires sur les ordonnances de ne pas faire, sur les ordonnances relatives à la conduite des parties, ensuite, sur les droits de garde, et finalement sur l'amélioration de la version française des lois.

Donc, je passe au premier point tout de suite. L'Action ontarienne est heureuse d'appuyer le projet de loi 133 et considère que ce projet de loi a le potentiel d'améliorer la situation de femmes qui craignent pour leur sécurité et qu'un plus grand nombre de femmes aura accès aux ordonnances de ne pas faire.

Je passe à mon deuxième point, qui porte sur la protection des femmes francophones en particulier et qui passe nécessairement par un meilleur accès aux services en français, ce que l'Action ontarienne considère doit toujours continuer à être amélioré.

Quelques exemples de situations auxquelles les femmes francophones font face : lorsqu'elles vivent des situations, par exemple, de violence conjugale, c'est tout simplement le délai dans les procédures, et on sait qu'en termes de violence conjugale, on n'a pas à tolérer de délai. Donc, en tant que femme francophone, on aimerait que cette situation soit améliorée.

Ensuite, il y a des femmes francophones qui sont un peu déconnectées de l'actualité en ce qui concerne la violence faite aux femmes, la violence conjugale, car il y a peu de médias francophones en Ontario.

Ensuite, certaines femmes peuvent vivre un certain isolement, si on veut. Il y a plusieurs femmes francophones qui vivent dans des petites communautés dans les milieux ruraux en Ontario.

Ensuite, il y a aussi la situation des femmes francophones nouvelles arrivantes en Ontario qui, qu'elles soient dans un milieu urbain ou rural, peuvent être un peu déconnectées des réseaux qui offrent des services en français.

Je passe à mon troisième point, qui est de commenter sur les ordonnances de ne pas faire, et j'ai quelques commentaires à ce niveau-là. En général, les changements qui vont être apportés probablement à l'article 46 de la Loi sur le droit de la famille et à l'article 35 de la Loi portant réforme du droit de l'enfance sont jugés plutôt positifs par l'Action ontarienne. Cependant, l'Action ontarienne aimerait apporter certaines réserves par rapport au test des motifs raisonnables de crainte pour sa sécurité.

Donc, il y a des aspects positifs à ce test-là et des aspects peut-être plus négatifs. D'une part, le fait d'avoir un test explicite et de requérir des motifs raisonnables peut être une bonne chose parce que ça va amener les femmes à décrire leur situation plus en détail, et si on a plus de détail, peut-être qu'on comprend mieux la situation qu'elles vivent. D'autre part, l'idée d'amener la notion du « raisonnable » comporte le risque que cette notion du raisonnable ne sera pas tout à fait assez flexible pour répondre à tous les genres de situations de violence conjugale, et peut-être que les formes de violence conjugale sont un petit peu plus subtiles et moins visibles. Donc, on en vient à se demander ce qui va être considéré comme raisonnable dans ces situations-là.

Je vous donne un exemple concret. Prenons une femme qui vient de se séparer et elle va faire des courses au centre d'achats avec ses enfants. Elle sort du centre d'achats, ouvre la porte. Le conjoint est là avec des sacs d'épicerie et l'attend pour donner ça à elle et aux enfants. La femme qui vient de se séparer n'avait pas dit à son exconjoint qu'elle allait faire des courses au centre d'achats. De son point de vue à elle, elle se dit, « Mais qu'est-ce qui se passe ? Il me suit ? » et elle craint pour sa sécurité. D'autre part, l'homme en question explique qu'il arrivait tout simplement au centre d'achats, il a reconnu la voiture de son ex-conjointe et à ce moment-là il s'est dit qu'il allait lui faire une surprise et faire une bonne action en apportant de la nourriture pour ses enfants. Donc, de son point de vue, il voulait faire un geste positif. Qu'est-ce que le nouveau projet de loi va faire avec ce genre de situation-là? Est-ce que la situation de la femme qui, elle, se sent contrôlée d'une façon suivie-est-ce que ça va être jugé raisonnable?

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C'est ce genre de question que soulève l'Action ontarienne, et nous sommes tout à fait en faveur des changements qu'apporte le projet de loi, en notant qu'il y a une bonne compréhension de la gamme des situations de violence conjugale auxquelles les femmes peuvent faire face.

Mon autre point sur les ordonnances de ne pas faire concerne les personnes qui sont visées par ce genre d'ordonnance. L'Action ontarienne trouve très positif que l'on veuille ouvrir la porte à pouvoir obtenir des ordonnance de ne pas faire contre des personnes avec qui les femmes cohabitent : autrement dit, des gens avec qui les femmes peuvent être dans des relations conjugales à court terme. On sait bien que la violence peut se produire pas seulement dans les relations à long terme; elle peut se produire dans les relations à court terme. Donc, c'est

tout à fait logique de faire en sorte que toutes les femmes aient la même protection.

Cependant, l'Action ontarienne évidemment aimerait peut-être que le projet de loi aille un peu plus loin. C'està-dire, on aimerait que le projet de loi s'étende même aux membres de la famille élargie ou aux personnes qui partagent le même toit. Une des raisons, c'est que la situation de plusieurs femmes francophones nouvellement arrivées au Canada est qu'elles ont des liens très serrés avec leur famille élargie. C'est un exemple ; elles ne sont pas les seules. Par contre, dans ces situations-là. les dynamiques de violence conjugale peuvent être renforcées par d'autres membres de la famille. Donc, il pourrait être intéressant qu'elles puissent obtenir une ordonnance contre ces personnes-là. On voit que dans la Loi portant réforme du droit de l'enfance, quelqu'un qui a la garde d'un enfant peut obtenir des ordonnances contre toute personne, tandis que dans la Loi sur le droit de la famille, ça peut seulement viser les conjoints, et, si le projet de loi passe, à ce moment-là aussi les personnes en relation à court terme. Je rappelle que c'est une très bonne chose, et ça doit rester dans le projet de loi, selon l'Action ontarienne.

Mon troisième point sur les ordonnances de ne pas faire, c'est concernant la criminalisation. Encore une fois, lorsqu'on pense à cela, du point de vue des nouvelles arrivantes en Ontario, ce ne sera pas un groupe qui aura tendance à voir très positivement des solutions qui impliquent plus de criminalisation, plus de contact avec la police. Elles vont peut-être avoir un peu de réticence à interagir de cette façon-là pour se protéger.

Par ailleurs, il est certain qu'il y a certains groupes de femmes qui vont continuer d'utiliser les ordonnances de ne pas faire, et, étant donné que l'un des problèmes avec ces ordonnances-là est de les faire respecter—parce que, bien entendu, si vous avez des ordonnances et elles ne sont pas respectées, ça ne sert à rien. Donc l'Action ontarienne encore une fois garde une vision positive de cette proposition, en ce sens qu'il y a certains groupes de femmes qui verront peut-être les bénéfices d'une criminalisation du non-respect des ordonnances, si ça fait en sorte qu'on voit ces ordonnances-là, qu'on les prend plus au sérieux. Donc, l'Action ontarienne n'est pas en défaveur de ça.

Finalement, pour les ordonnances de ne pas faire: la question de préparer des formules et des guides en langage clair pour que se soit un petit peu plus accessible, c'est-à-dire que les femmes comprennent de quoi il s'agit quand on parle d'ordonnances de ne pas faire. Très bonne chose. On s'attend évidemment à ce que ces documents-là soient disponibles en français, mais l'Action ontarienne veut souligner le fait qu'il arrive souvent qu'il y a des documents qui soient produits en français et en anglais et, par contre, ça ne va pas plus loin. C'est-à-dire, si vous prenez le téléphone, après avoir lu le document, pour poser une question, et vous vous heurtez à une surprise parce que vous appelez, vous parlez français, peut-être qu'il y a un manque de soutien. Il faudrait aller au-delà de juste produire le document, et ça prend le

système qui va soutenir les femmes francophones, et surtout dans les lieux où elles sont très en minorité.

Je passe à mes trois derniers points, qui sont un peu plus rapides. Pour les ordonnances relatives à la conduite des parties, les articles proposés, qui sont 25.1 et 47.1 dans la Loi sur le droit de la famille, on considère que c'est important pour empêcher l'abus lors des procédures. On sait que dans une situation de violence conjugale, ce qui peut se passer, c'est qu'une personne prend avantage du système de la justice, malheureusement, et utilise les dynamiques de pouvoir qui sont déjà inscrites dans ce système-là pour continuer de contrôler ou d'abuser de leur conjoint. On considère que ces ordonnances-là ne vont peut-être pas régler tout ce problème-là, mais elles vont apporter certaines améliorations.

Mon cinquième point concerne les droits de garde, c'est-à-dire, l'ajout de l'article 21.1 à la Loi portant réforme du droit de l'enfance. Encore une fois, il est positif de demander des affidavits aux personnes qui font demande de droit de garde. Pour ce qui est des personnes qui ne sont pas parents de ces enfants-là, la vérification des dossiers de police et de la protection de l'enfance est une bonne chose. L'Action ontarienne a des réticences tout simplement parce qu'il pourrait arriver—c'est un peu le même commentaire que celui que je viens de faire—que certains hommes qui ont tendance à avoir un comportement contrôlant veuillent faire des plaintes non justifiées pour un peu nuire à la demande de droit de garde faite par une femme.

L'Action ontarienne aimerait profiter de l'occasion pour mentionner que la difficulté qu'elle note souvent rencontrée par les femmes francophones est au niveau de modifier les ordonnances à un coût raisonnable. Elles ont de la difficulté à faire modifier les ordonnances dans des situations de violence conjugale. J'aimerais tout simplement souligner le fait qu'on a besoin de plus d'aide juridique en droit de la famille.

Mon point final est très court. C'est tout simplement de mentionner que l'Action ontarienne note qu'il y a une amélioration aux versions françaises des lois et que c'est excellent. Il y avait certaines erreurs, notamment dans la Loi sur le droit de la famille, articles 29, 34 et 35, et le projet de loi corrige ces erreurs dans la langue française. Ces erreurs étaient tantôt grammaticales, tantôt au niveau des concepts, ce qui est plus grave. Donc, on trouve que c'est excellent. Je vous remercie beaucoup.

Le Président (M. Shafiq Qaadri): Merci, maître Lassonde, pour vos remarques. Nous commençons avec les conservateurs. On a presque deux minutes et demie pour chaque côté—two and a half minutes per side. Mrs. Elliott.

Mrs. Christine Elliott: Merci, madame Lassonde. Please excuse me for not being able to respond en français; I'm taking lessons, but unfortunately I'm not sufficiently proficient to ask you a question yet.

I did have two questions, one related to the domestic violence aspect of Bill 133 and your concerns that delays are unacceptable, and the other, that you often have situations where you have other relationships, wider relation-

ships, more short-term relationships that aren't being covered.

As you may know, the Domestic Violence Protection Act, which would have allowed access to emergency intervention orders and would have allowed dating relationships, for example, to have been included, is being repealed as part of this legislation. Would you support that, or would you feel that that should be maintained as part of a domestic violence statute going forward?

M^{me} Julie Lassonde: Je pense que l'Action ontarienne effectivement supporterait le fait qu'on n'adopte pas cet ancien projet de loi, mais je ne peux pas aller dans les détails dans mes commentaires parce que ce n'était pas le sujet pour lequel j'ai été mandatée aujourd'hui par l'Action ontarienne.

Pour ce qui est des relations à court terme, c'est vrai qu'on demande qu'il y ait une cohabitation, donc je pense qu'il n'est pas complètement écarté qu'on puisse considérer d'autres relations où il n'y a pas de cohabitation. De notre côté, pour ce qui est des mesures dans des situations d'urgence, je dirais que si vous prenez l'exemple que je vous ai donné tantôt d'une femme qui va faire des courses, c'est une forme vraiment subtile de violence. Tout ce qui est important à comprendre, c'est que ce ne sont pas toutes les formes de violence conjugale où la personne va être, à 3 heures du matin, avec un couteau planté dans l'épaule, en train de demander de l'aide.

J'ai peur qu'il y ait des mesures qui, disons, mettent l'accent sur les grandes urgences et les cas les plus extrêmes qui normalement devraient pouvoir être répondus par la police à ce moment, à toute heure du jour et de la nuit. J'ai peur que ça donne peut-être une perspective un peu étroite de la violence conjugale. Comme je vous ai dit, l'Action ontarienne n'est pas contre les mesures positives, mais on aimerait une appréciation très subtile des dynamiques de—

Le Président (M. Shafiq Qaadri): Merci, madame Elliott. Il est maintenant le tour de M. Kormos.

Mr. Peter Kormos: Thank you, Ms. Lassonde. I obviously have some significant interest because I come from Welland, a strong Bill 8 community. I'm interested because we have a historic francophone community, as well as a growing francophone community of new Canadians. You write on page 7 that the new francophones coming into Canada are from Rwanda, Congo, Cameroon, Burundi, for example. That adds an extra layer, because you've got the language issue—and because we're a Bill 8 community, we can accommodate that to a certain extent—but you've got a community of new Canadians and you have some cultural changes that are happening. What do you say about that? Does this legislation consider that, in your view? Does it accommodate that? Does it provide for working with new Canadians?

M^{me} Julie Lassonde: J'ai noté certaines dispositions du projet de loi qui ne répondent pas nécessairement très bien aux communautés de femmes nouvelles arrivantes. C'est au niveau de la criminalisation et c'est peut-être au niveau—je vais retourner à mes notes—d'inclure les membres de la famille élargie comme personnes visées par des ordonnances de ne pas faire. Alors, ce sont des exemples. Mais, étant donné que le projet de loi peut avoir des côtés positifs pour d'autres groupes de femmes, on ne veut pas s'y opposer.

Par contre, ce que vous dites de réconcilier culture et langue, c'est un point très important. Je ne crois pas que cela a été abordé en grand détail dans ce projet de loi-ci. Souvent c'est plutôt dans les mécanismes sur place, les organismes communautaires qui prennent la loi et qui font les ajustements nécessaires pour pouvoir répondre à ces communautés-là, que c'est plus efficace.

Une chose qui est assez intéressante chez les femmes francophones nouvelles arrivantes c'est qu'il va y avoir certains groupes de femmes qui parlent peut-être comme première langue l'arabe, l'espagnol, le lingala, le kirundi, qui ne sont pas de prime abord francophones mais qui vont avoir culturellement un lien avec la communauté francophone. Et c'est intéressant parce que—

Le Président (M. Shafiq Qaadri): Merci, madame Lassonde et monsieur Kormos.

M^{me} Julie Lassonde: Il faudrait répondre à ces communautés.

Le Président (M. Shafiq Qaadri): Au gouvernement, monsieur Ramal.

M. Khalil Ramal: Merci beaucoup, madame Lassonde. Notre gouvernement connaît très bien ce sujet très complexe, parce qu'il y a beaucoup d'éléments dans ce sujet. Tout le temps, notre gouvernement cherche un nouveau mécanisme pour améliorer la situation des femmes dans la province de l'Ontario, spécialement des nouveaux arrivants, des francophones, des autochtones : chaque personne qui habite en Ontario.

Dites-moi, s'il vous plaît, quel élément est le plus important pour vous pour améliorer ce projet de loi ?

M^{me} Julie Lassonde: Je pense que s'il y a un élément qui doit absolument rester, c'est la disposition qui fait en sorte que, comme personne visée, il puisse y avoir les personnes qui sont en relation conjugale à court terme.

M. Khalil Ramal: Merci.

Le Président (M. Shafiq Qaadri): Merci, monsieur Ramal, et merci, madame Lassonde. Au nom du comité, je vous remercie pour votre témoignage.

FAMILY LAWYERS ASSOCIATION

The Chair (Mr. Shafiq Qaadri): We'll now move to our next presenters: Ms. Wunch, Ms. Reilly and Mr. Lamourie of the Family Lawyers Association. As you've seen, there are 20 minutes in which to make your combined remarks. The time remaining will be divided equally amongst the parties. I would invite you to please be seated and identify yourselves individually for the purposes of Hansard recording. I invite you to begin now.

Ms. Sara Wunch: My name is Sara Wunch. I will be doing the submissions today on behalf of the Family Lawyers Association, of which I am the chair. To my im-

mediate left is Mary Reilly, who actually was instrumental and did most of the written submissions; and of course, Mr. Garry Lamourie, who is also a member of our board.

While the Family Lawyers Association recognizes that Bill 133 is motivated by a desire to improve the process by which custody orders are made in Ontario and, further, to give the courts more information with which to make well-informed decisions in matters affecting the well-being of children, it is our position that the legislation in its current form will have significant and unintended negative consequences for the administration of justice and that it will create a system and process which will result in protracting the time for the resolution of issues before the court. It is our position that sections 6 to 10 of the bill will be difficult, onerous and time-consuming to implement, if in fact they can be implemented at all.

It is important to note that overwhelmingly, in the majority of cases in which a custody order is sought, there are no protection concerns. In cases where protection concerns exist, there is most often already a protection agency involved.

We must remember that custody orders are not placement orders. Parents can leave their children with family members or friends without court orders. Parental autonomy is the norm, and we have always trusted that parents will make good choices for their children without intervention. In fact, we encourage parents to make decisions with respect to their children through the negotiation of separation agreements, mediation and other methodology that results in a consent agreement and placement.

The question then becomes: What is the purpose of this legislation? Are we trying to ferret out protection cases that have been missed? Because, if so, there are better ways to accomplish that aim.

What is the standard to be? If there is society involvement and the children are in a kinship placement pursuant to a protection application, should there not be an exemption for those persons if they subsequently apply for custody?

What will happen in a case where interim orders are required? I can cite several examples of cases. One is a case where a child was sponsored by a close relative in Ontario as a result of the death of a biological mother in another country. In the absence of a custody order, that child cannot go to school, that child cannot obtain medical care, and there is no one able to sign in the event of a medical emergency. An interim order is of the utmost importance in such a case.

If in fact an unrepresented litigant comes to court with the intention of obtaining a custody order and the requirement exists that they execute releases for criminal records and existing society files, they would clearly be aware that such files exist, and they may well choose to forgo the legal custody, retain the de facto custody and go underground. The case that would most warrant this intervention would not have it In contested custody matters, the information required for a decision will be before the court and the process, as proposed, might not be necessary. Where the litigants are unrepresented, the increased paperwork may prove to be a daunting task, and where litigants are represented, there will be an increased cost to the clients for either privately retained or legally aided counsel.

This legislation will result in the necessity for the government to increase funding to Legal Aid Ontario, child protection agencies, the Office of the Children's Lawyer and an increase in funding necessary to run the Family Court systems. In addition, the government will need to invest the necessary funds to ensure a system is established which would enable the courts province-wide to obtain current and/or historical data on a party seeking custody of a child.

Even if such a system were implemented, it would not address the issue of applicants who have resided in other provinces or countries. If the matter is uncontested, the proposed affidavit could be made available to the presiding justice by attaching same to the consent during an uncontested trial process when the decision will be made. To provide this information to a judge at first instance is too soon.

Further, it is our position that it is not the job of the decision-maker to investigate, but, rather, that would be the job of the Office of the Children's Lawyer. In order for that to happen, there must be a change to the Courts of Justice Act, which would enable a court to compel the involvement of the OCL in cases where the initial disclosure reveals a concern.

The proposed amendments apply only to persons bringing the application for custody and/or access, but if that person is residing with someone who could potentially pose a risk to the child, it may never be known to the court. Further, if the applicant's relationships change, the new partner could also potentially pose a risk. We must also take into account that the applicant and partners may have also utilized different names. The collection of data, in and of itself, could be a nightmare in a province such as Ontario, as there is no central data bank which would allow for the search of information about non-biological parents, persons who are applying for custody of a child.

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Let us assume that the forms are completed and the records are now before the presiding justice. How were the records admitted into evidence? How was the court to judge the relevance? Will parties be able to challenge the relevance and the admissibility of the documentation, and who will weigh the privacy interests of non-parties to the application? The bench should not be put into the position of an investigator, as the judiciary must fill the role of impartial, dispassionate arbiter and unbiased fact-finder.

With respect to restraining orders, the current legislation provides that a court may make an interim or final order restraining a person from molesting, annoying or harassing the applicant or children in the applicant's law-

ful custody and may require the person to enter into the recognizance or post the bond that the court considers appropriate. Currently, if a party contravenes a restraining order, he or she is guilty of an offence, and on conviction, is liable to either or both a fine of \$5,000 and imprisonment for a term of not more than three months for the first offence and not more than two years for a subsequent offence. The proposed legislation creates a higher test to be met by the party seeking a restraining order. The party will be required to demonstrate that he or she has reasonable grounds to fear for his or her safety or for the safety of his or her children. Such a test is closer to the test found in the criminal courts, and will be more difficult for applicants to demonstrate on a with- or without-notice basis. In many of these cases, the criminal courts are already involved and bail conditions exist. It is our submission that fewer restraining orders will be granted in the Family Court.

In the case where the Family Court does make a restraining order, the enforcement and prosecution will fall to the criminal courts. The criminal courts are not as astute to the nuances between the parties whose relationships have broken down. Currently, the criminal courts frequently make orders which restrict access between parents and children, which cannot be varied by the Family Court and which may not be in the best interests of the children involved.

Since 1992, a large network of supervised access centres has been created and funded by our provincial government. Often, however, we see orders from the criminal courts which mandate either no access or access supervised by a child protection agency. It is our submission that with the implementation of this amendment, the criminal bench, crowns' offices and the criminal bar will need to be educated on the appropriate orders that should be available in the face of breaches of Family Court restraining orders.

Infraction of Family Court restraining orders will result in Family Court litigants being involved in two separate court proceedings. There will be an increased caseload on an already overburdened criminal justice system and further stresses on Legal Aid Ontario, as the accused may retain criminal counsel on a legal aid certificate or avail themselves of the services of duty counsel in our criminal courts.

As a result of a conviction, pursuant to the Criminal Code, if the respondent is not a Canadian citizen, he or she may face deportation. This may result in the applicant not obtaining child or spousal support and the loss of the relationship between the child and the offending parent. This is not in the best interests of the child, and the potential loss of financial support may result in the non-reporting of domestic violence.

In closing, the Family Lawyers Association is requesting that we be given the opportunity to have meaningful input into the drafting of regulations for this legislation.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wunch. About three minutes or so per side. Mr. Kormos?

Mr. Peter Kormos: Thank you kindly. The 13 family court judges tabled a letter, a most unusual occurrence in the 21 years I've been here, commenting on this legislation. Their focus was mostly on the child custody areas, and we know what gave rise to that part of the bill. They said, amongst other things, "We are convinced Bill 133 does not provide a workable system."

Like you, judges say it's not their role to investigate, or shouldn't be. They refer to the need to have the Office of the Children's Lawyer involved in custody where parties are unrepresented. That would mean ramping up the resources at the public level.

So what are we to do? Here we are. You accept the pension proposals in this bill—

Ms. Mary Reilly: In terms of the splitting of pensions, yes.

Mr. Peter Kormos: Yes, the methodology. But what are we to do about judges saying that Bill 133 does not address this whole area around child custody and custody applications—and you seem to agree.

Ms. Sara Wunch: From the perspective of what actually happens in the courts, the case that brought this legislation to be drafted really is not the norm.

Mr. Peter Kormos: Quite right. Thank goodness.

Ms. Sara Wunch: You're right. We thank goodness for that. That child was in the custody of those persons for months before this application was brought. If those persons had to go through this process, nothing would have changed, except it never would have made it to the court and the legislation would not have been drafted.

Mr. Peter Kormos: Fair enough. But what are we to do with this bill now? You're saying the bill doesn't address the problem. The judges are saying it's not workable.

Ms. Mary Reilly: The Courts of Justice Act allows the Office of the Children's Lawyer—and I'm certainly not speaking on their behalf. It allows for the appointment either of a social worker or legal representation. In custody and access cases, it's discretionary.

When I first heard about this bill, my first thought was, get the OCL involved. They have the resources. They can do the investigation. The Courts of Justice Act could be changed to make it mandatory for the OCL to take these types of files. At the same time, I think we recognize, as an association, that the office has to be funded properly. This will take money. Children are important. So the government will have to show a commitment to funding the OCL properly.

The Chair (Mr. Shafiq Qaadri): I have to intervene there. To the government side, Mr. Zimmer.

Mr. David Zimmer: In a custody application, given that what's in the best interests of the child is the governing principle, I don't understand why there would be any objections to having free and ready access to any criminal records of any parent or other adult applying to be involved in the custody decision. That's just beyond me. If there are criminal records out there, police records out there, that have to do with the person applying for custody arrangements, I can't get my head around why

on earth you wouldn't want that to be in front of a presiding judge.

Ms. Mary Reilly: We're not objecting to as much information in front of the judiciary—the problem with this legislation is the cumbersomeness of it and how people are going to deal with it. We work in this system every day, and when you're dealing with a lot of unrepresented litigants—it's very difficult for them, first of all, to go through the process, to go down to 40 College, to get the police record check. The other issue, of course, is delay. Sometimes there are issues that have to be dealt with for these children: registering in school, getting medical—

Mr. David Zimmer: Then you have no objections to the decision-maker, the judge, having before him or her the criminal records and criminal proceedings of an applicant to a custody proceeding?

Ms. Mary Reilly: I believe the legislation calls for parents who are applying for custody to disclose that they've got a criminal record or a CAS involvement. It's the non-parent who has to provide the criminal record check. In terms of that type of information, no, obviously. But the problem is the process and how people are going to deal with this process.

Mr. David Zimmer: But you do agree that that's relevant and essential information for the judge to have? 1640

Ms. Mary Reilly: The existence of a criminal record won't necessarily say a person shouldn't be able to parent a child.

Mr. David Zimmer: I didn't say that. But that's relevant information that should be before the judge.

Ms. Mary Reilly: It could be relevant information.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Zimmer. Ms. Elliott?

Mr. David Zimmer: In what circumstances would it not—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Zimmer. Ms. Elliott?

Mrs. Christine Elliott: I'd just like to follow up on the question Mr. Kormos was asking with respect to the choices to be made here.

It seems to me-please tell me if I'm wrong-that there are really two choices. One is to follow through the set-up we've got under Bill 133, which is going to require a lot more resources for legal aid lawyers to help people complete these various affidavits, search all this information and do all the rest of it. But at the end of the day, that may or may not be complete and may put the judge in the position of having to decide something and be the investigator, which he shouldn't have to do. So it's going to be resources that are needed on one side. On the other side, you can get the Office of the Children's Lawyer involved, which is going to require more resources for them, but it seems to me that they're more equipped to be investigating this and preparing a more comprehensive report to put before the judge that will contain all the salient information.

Would you prefer the latter course of action? Is that a preferable way to deal with this?

Ms. Sara Wunch: Yes. Ms. Mary Reilly: Yes.

Ms. Sara Wunch: No question about it. The Office of the Children's Lawyer does have an investigatory body and they're equipped to do this. They also have legal staff that are equipped to sort through information and determine what's relevant and necessary, and to deal with the privacy issues as well.

Mrs. Christine Elliott: Do I have time for one more question?

The Chair (Mr. Shafiq Qaadri): Yes, you do.

Mrs. Christine Elliott: Okay. I just wanted to ask about the recalculation of support payments and the suggestion about who or what agency will be doing that—the Family Responsibility Office, I'd think. Can you tell me your opinion of it? What I hear in my community office is that they're already overwhelmed. They wouldn't be able to do this without significantly greater resources.

Ms. Sara Wunch: I agree with that position. I think that either a different agency has to be established or there has to be an influx of funds to allow them to do it.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wunch, Ms. Reilly and Mr. Lamourie, for your presentation and presence on behalf of the Family Lawyers Association.

BARRY CORBIN

The Chair (Mr. Shafiq Qaadri): We'll now move to our next presenter, Mr. Barry Corbin, who is presenting to us in his individual capacity and for that reason will have 15 minutes to make his remarks. Welcome, Mr. Corbin. I invite you to begin now.

Mr. Barry Corbin: Thank you very much to members of the committee for giving me an opportunity to talk about Bill 133.

As you heard, my comments don't represent the views of any organization. They are merely the observations of an estates practitioner with a keen interest in legislation that has stood at the intersection of family law and estates law for the last 23 years. My comments are very narrowly addressed to a proposed change to the matrimonial property rules. I believe my written submission was already circulated; my oral remarks will go a little bit further. I was prompted to do something by way of a presentation because when I read the Hansard reports of what was talked about on Bill 133, there wasn't one word said about this, so I thought I should say a word.

I want to preface my criticisms of the particular provision of the bill by giving you a two-minute or less review of the matrimonial property provisions of the statute. Part one is all about dividing the marriage spoils between legally married spouses when the relationship ends, whether it's on marriage breakdown or on death. What happens at the end of that relationship is that each spouse measures his or her net worth increase during the marriage years, and each spouse's net worth increase is

called his or her net family property. Then, when one of the spouses makes an application for equalization, the spouse with the higher net family property has to pay an amount to the spouse with the lower net family property, and that amount is half the difference between those amounts.

When the marriage ends on separation, the date on which you make that financial snapshot is the day of separation. However, when it ends on death where there has been no prior separation, the valuation date, as it's called, is one day before death, and that's really the key to the issue I'm going to be talking about.

I'll give you an example. Whether it's a marriage breakdown or death, if one spouse's net worth increased by \$200,000 during the marriage and the other one's increased by \$500,000, the difference would be \$300,000, and the one who had the higher net worth increase would have to pay \$150,000 to the other spouse in order to give them \$350,000 each of the joint net worth increase. There are exceptions to that—it's a bit simplified—but they're not relevant to the comments I'm making.

The equalization on death is quite different in several respects, and that's why this issue is of concern to me.

First of all, on death, the equalization payment is only one-way. If the surviving spouse has a higher net family property than the deceased spouse, the surviving spouse does not have to make an equalization payment to the estate of the deceased spouse.

The second thing is that when the surviving spouse chooses to elect in favour of an equalization, he or she has to forfeit whatever entitlements would come by virtue of the deceased spouse's will, if there was one, or the intestate succession rules in Ontario, when there's no will.

The third difference—and this is coming to the crux of what I want to discuss—is that when you elect in favour of equalization as a surviving spouse, you have to account for certain things that you received as a result of the death of the first spouse. The two categories of things you're supposed to account for are life insurance that you receive as a designated beneficiary and the other category is lump sum payments under a pension or similar plan, again, as a designated beneficiary. So, by way of example, if you would have been entitled, as a surviving spouse, to an equalization of \$400,000 and you were the designated beneficiary for \$300,000, the only amount that the estate would be obliged to pay you would be the extra \$100,000.

The problem, and the one for which the amendment is proposed, is that a surviving spouse, at the moment, doesn't have to account for one category of property that he or she enjoys by virtue of the first death, and that is property held jointly with a right of survivorship.

So, you go back to the point I made that you capture the net worth increases one day before death, in the case where the marriage ends with the death of one of the spouses. At that moment, if both spouses hold property jointly with a right of survivorship, they have to account

for 50%, even though immediately upon the death of one spouse, the survivor gets the whole thing. That has been perceived as an unreasonable windfall to the surviving spouse, and it's the reason why the recommendation from, I believe, the bar association came and showed up as one more thing to credit; namely, amounts you receive under a joint tenancy that you held with the deceased spouse. So that's a good thing.

The bad thing is there are three problems with the language of the legislation that I want to identify.

Firstly, when those of us who were in law school went through, we remember joint tenancies as being all about real estate. You know quite well, I'm sure—and some of you may also have your property held jointly with a spouse or significant other or child—that you can hold property like bank accounts, investment accounts, GICs and the like, jointly with a right of survivorship. The concern I have is that if the phrase "joint tenancy"—that's the phrase used in the legislation—is interpreted restrictively to apply only to real estate, it means that property that is held jointly that's not real estate, like a bank account or investment account, will pass to the surviving spouse, who will not have to account for it, and there will be the windfall in that situation, which this legislation is attempting to fix.

The second thing is—and this stems from a Supreme Court of Canada decision in a case called Pecore that was decided a couple of years ago. It surprised all the estates practitioners in Ontario and probably the rest of the country. The Supreme Court said you can give away the right of survivorship in a bank account or investment account and keep everything else for yourself. This was news to us, because we all thought that you made a gift, when you give half, or you didn't give them anything at all. But the Supreme Court said, no, there's this new kind of account where you can give away just the right of survivorship. If that's what you have done, and you die, your spouse will be able to say, "Well, even if joint tenancies do capture personal property, this wasn't a joint tenancy." The joint tenancy is characterized-I won't go into the details-by four unities: time, possession, interest, and title. Clearly, if one spouse has only the right of survivorship and the other spouse has everything else, it can't be a joint tenancy in law. Therefore, quite clearly, anybody who has set up one of these accounts that the Supreme Court has identified as being possible will find that the surviving spouse will get everything that's in the account on the death of the first spouse and not have to account for any of it. So that is another reason why I think the language of the legislation should be cleared up. 1650

The last thing I want to talk about is that it says that this provision, along with a whole bunch of others, comes into force when the bill receives royal assent. There is a legitimate argument to be made that if the chronology of events is (a) the couple separates without an equalization payment having been sought, (b) the bill receives royal assent, and (c) one spouse dies, then the legislation doesn't apply. I think the drafters probably intended that

all you do is look at the date of death, but I would suggest that there are problems there, and I think I've gone into them in the written material that I've presented.

The balance of my comments are directed at things that aren't in those written submissions. As long as you're fixing the credit mechanism, there are other problems with it that have been there for 23 years and it wouldn't be a bad idea to fix them now.

You'll remember I said that one of the things you have to credit as a surviving spouse is amounts received as a designated beneficiary under a pension or a similar plan. This question has come up, I'm sure, hundreds of times: Is a registered retirement savings plan or a RRIF a similar plan? Nobody knows. As far I know, there's no court case that has been introduced to address that question. Why not fix the problem right now by including a provision in there that says very clearly, "Is it or isn't it one of those animals?"

The second thing that I think the bill could go further with is what to do about the spouse who receives RRSP or RRIF money—and remember, if it's insurance-based, you have to credit it. There's no question, because then you're into the section dealing with life insurance crediting, not with pension or similar plans. So if you've got an insurer that has issued the RRSP or the RRIF, there's no question the surviving spouse has to account for it. But that money is pre-tax dollars. You could understand if somebody got \$300,000 of life insurance that they'd have to account for it dollar for dollar. But if they get \$300,000 of pre-tax money, it's going to be of a lot less value to them when they collapse it. It seems to me there should be something in the legislation that says when a surviving spouse receives pre-tax dollars, they ought to get some benefit in the form of a reduction of the amount they have to credit.

I'll stop here, if anyone has any questions.

The Chair (Mr. Shafiq Qaadri): Thank you. About a minute and a half per side-

Mr. Peter Kormos: On a point of order, Chair: I'm prepared to give all of my time to Mr. Zimmer, because I think he should respond.

The Chair (Mr. Shafiq Qaadri): We note that extreme generosity. I will proceed now to offer the floor to Mr. Zimmer. We have about a minute and a half per side.

Mr. David Zimmer: Now I know why I struggled with estates law in first-year law school and went into litigation rather than estates work.

Are you Barry Corbin, the author?

Mr. Barry Corbin: Occasionally.

Mr. David Zimmer: Yes, I know. You're the expert.

I thoroughly enjoyed your presentation. I'm going to take your notes home and read them carefully tomorrow morning over my breakfast coffee, because it will be a real refresher course for me. I thank you for your sub-

The Chair (Mr. Shafiq Qaadri): Mrs. Elliott.

Mrs. Christine Elliott: Like Mr. Zimmer, I appreciate the opportunity to take a look at this in greater detail. It is something that had not occurred to me in our initial comments with respect to Bill 133, but I certainly will review it. I see the amendments that you've suggested on page 3, and perhaps if we have any questions, we may contact you with respect to those.

Mr. Barry Corbin: By all means.

Mrs. Christine Elliott: We'll certainly take that into consideration. Thank you.

The Chair (Mr. Shafiq Qaadri): Mr. Kormos.

Mr. Peter Kormos: Look, this is why bills should be subjected to public hearings: because you've got people with great levels of expertise prepared to come forward and contribute to the process. We've heard several things now over the course of two days from actuaries, from lawyers, from family law practitioners.

What I'm suggesting to you, Chair, is that the government should be responding to these various concerns in an articulate way here in this committee process. If we're going to bother having a committee, then that's how it should roll out. Otherwise, Mr. Corbin and others are simply wasting their time, and none of us should want them to do that.

Thank you very much, sir. I appreciate it.

Mr. Barry Corbin: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos, and thank you, Mr. Corbin, for your presence and deputation.

DSW ACTUARIAL SERVICES

The Chair (Mr. Shafiq Qaadri): I'll now invite our next presenter, Mr. David Wolgelerenter, actuary of DSW Actuarial Services, to please begin. You've got, as you know, 20 minutes in which to make your presentation, beginning now.

Mr. David Wolgelerenter: You can certainly call me

David.

Thank you for the opportunity to speak today. Hopefully, people have had a chance to read my submission or will have a chance to read my submission.

Just in terms of my credentials, I should briefly say I have a bachelor of science in actuarial science and an MBA in finance. I'm a fellow of the Canadian Institute of Actuaries and the Society of Actuaries. I have close to two decades of experience dealing with pensions and quite a bit, actually, as well in the family law context. That's why I've been asked repeatedly to lecture on this topic for the Ontario Bar Association as well as Osgoode Hall continuing legal education.

In a nutshell, as you've heard from other actuaries, the pension settlement aspects of Bill 133 are very good, and that's the primary problem with the current system: the

inability to settle the pension asset.

The valuation aspects, however, are highly problematic for divorcing couples and also for the pension plans. For the most part, that's because there are contradictory objectives that can't be rectified through the regulations.

Now, the surprise thing here is that the big winners in all this will be large actuarial firms and human resources outsourcing firms, which will have to set up these systems for employers. The big pension plans that you've heard come before you are in a position that they can afford to do this, and it's just a decimal point in their returns. But for smaller employers, this is going to be big bucks for them, and that will be going towards these various outsourcing firms.

One of the points I wanted to make was that I keep hearing from various sources, including at these committee hearings, that there's this myth that there are duelling actuaries wasting the courts' time. I'm one of the larger providers of this service over the last five years. In the greater Toronto area in particular, I deal with some of the larger family law firms. I've done somewhere in the range of 1,000 reports over the last five or six years, and I've actually gone to court only once on a family law-related issue. By the way, there was no other actuary on the other side. So I'm not sure where this is coming from, but every time I hear it, I think, "Huh?"

The problem with Bill 133 is that pension plan administrators, who had no intention of providing expert evidence, are essentially being asked to do just that. Many administrators now don't even put their name on correspondence for fear of being identified with it in some way. I will get letters from administrators signed "The ABC Company Pension Plan System" because if a call is returned, they want it to just go into the general queue. They're not prepared to provide expert evidence. There's also the question of whether they will be unbiased in providing the figures.

The regulations could be 30 pages long, trying to cover off every possible scenario, but the fact of the matter is, they won't cover off every scenario, so employers will be forced, to a certain extent, to take a stand on certain issues. That's just a fact; that's the way it is now. With pensions, the unusual is not that unusual, because there are so many different permutations and combinations of circumstance that can lead to different issues.

Another issue that I don't think anyone has raised is the issue of privacy. One of the first things someone will have to do now when they get divorced, if they have a pension, is immediately go to their employer and say, "I'm getting separated, and I need a valuation." I can't tell you how many times I've been told, when additional information is needed for a valuation, "Don't tell my employer that I'm getting separated. It's none of their business. Just say you need these bits of information, but don't tell them I'm getting separated, because that's my business." In due course, maybe a few years later, they would relay that information. This will essentially force them to go to their employer and say, "Guess what—I'm getting separated." If you're the non-member spouse, will you actually trust the value that's coming from the employer when that employer essentially has a closer attachment to the member spouse?

The other thing is that there's another sort of myth that Bill 133 will unclog the court system because pension plan administrators will be providing the value and not actuaries. But I can tell you that I have a stack of files on my desk in my office, and the sole thing that I'm waiting for in order to complete the valuation is pension plan administrators providing some additional information that I had asked them questions about. I've had circumstances where family lawyers have written threatening letters to the pension plan administrators saying, "Give me the information. The court needs the valuation." It's going to an unknown individual who's part of a big system, and it just never comes. Sometimes that can take months.

Turning to a different issue—and it's really the main issue about Bill 133, the valuation issue. I did a recent case where I had a 50-year-old female with 22 years of credited service in a pension plan, and the pre-tax values ranged from around \$300,000—that's for retirement at age 65—to \$600,000, assuming that the pension starts at age 54, almost double. The question I would ask for anyone voting on this bill is: What is the value going to be in that circumstance?

As it stands now, the retirement age is a question of fact to be determined by the court or between the parties. So coming up with a number like \$600,000 will be very unfair to the plan member and will be very problematic for pension plan administrators and employers. On the other hand, coming up with a number like \$300,000—the pension plans are going to come to you and say, and they have already come to you and said, "Go with the minimum commuted value," but that is very unfair to the nonmember spouse. You can't reconcile those two through the regulations. I've also heard representatives of the Attorney General's office say, "Well, we'll just pick a mid-point. So let's make it \$450,000—some arbitrary mid-point between \$300,000 and \$600,000." Now, the problem with that is, that can be very unfair, and it's not just a hypothetical exercise. It could be very evident to the court that the actual value of the pension was \$300,000 as of the day of separation, and this bill would force it to be \$450,000. So, if you do the math, the nonmember spouse gets half of \$450,000, or \$225,000, and the member, seeing as the actual value in the plan for them is \$300,000, will get \$75,000. That's on a midpoint, let alone if \$600,000 is chosen.

Incidentally, the Law Commission of Ontario specifically recommended against a single number result. That's another myth that I've heard around: that this bill is in accordance with the Law Commission of Ontario. On key provisions, it is absolutely not in accordance with the Law Commission of Ontario. They did a 50-to-100 page report detailing every last bit of pension issues in family law.

In terms of my example, you can think in terms of, what if the member intended to retire at 54 and get that larger value, essentially, and then they actually did retire at that age? Why would you want to put some artificial lower number? The opposite is true as well. If the facts of the case dictate that this person is not going to retire until 65 because they can't afford it, they've got all sorts of obligations, why would you assume immediate retire-

ment and essentially work against them in that way? What if the plan member is deathly ill? What about income taxes? What if the plan is insolvent? There are so many issues that, when it comes down to it, ignoring the facts of the case can lead to absurd results, and sometimes they can be absurdly unfair. That will be evident to the parties; it's not, again, a hypothetical exercise.

In conclusion, I just wanted to say that the settlement options, again, are very good in terms of Bill 133, but if it's anything greater than that lower termination value, it will be a big problem for pension plans. If you look at all this, you've heard all these different actuaries coming in, and you think, "I don't really believe this actuarial valuation business, so let's just pick a number and move on," the problem with that is that there are going to be real problems for the individuals involved. If you really don't think that an actuarial valuation is the proper way to go about splitting a pension, then you can choose something like they do in BC, where they split the pension at source automatically, meaning that both spouses wait until retirement and they split the pension. That has its own share of problems, so I'm not specifically advocating it, but if you don't believe in a valuation, then don't do it. Don't put in place a system that is automatically unfair to one side or the other. And you should definitely read over the Law Commission of Ontario report.

The Chair (Mr. Shafiq Qaadri): Thank you, David. We'll now move to Ms. Elliott. It's about three minutes per side.

Mrs. Christine Elliott: Thank you very much for your presentation, David. Certainly, the evidence that we've heard so far from all the actuaries who have presented to us is to the same effect as your presentation: that we need to consider the separate values for the transfer value, so to speak, and then for the equalization value.

My colleague Mr. Kormos yesterday asked the question of the government as to why they chose not to consider the methods that were recommended by the law commission. I would reiterate from our side of things, as the Progressive Conservative Party, as to why that would be, because certainly it seems to be at odds with what the experts are recommending.

Mr. David Wolgelerenter: I think to a certain extent you've got different forces at work here. Pension lawyers see these ridiculous if-and-when agreements coming their way and they say, "We've just got to get rid of these one way or another." The problem is that they don't realize that that's a very small proportion of the valuations and pension splitting that goes on right now. Usually, it never comes across their desks. This is going to put thousands upon thousands of new calculations on their desks, and they haven't really grasped that.

On the family law side there's a similar issue, and they just want to simplify things. Pensions are a complex issue, so anything that simplifies it—they take a step back and say, "Okay, I guess it's good. The government will take care of it in the regulations," but they don't realize—until I tell them, of course—that it can't be solved by the

regulations because the regulations would still end up with one number that doesn't look at the facts of the case.

Mrs. Christine Elliott: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Elliott. Mr. Kormos?

Mr. Peter Kormos: Thank you kindly, sir. I refer to Mr. Zimmer often, because he's the parliamentary assistant and because I like him and because he's a capable and intelligent man—

Mr. David Zimmer: This is a set-up.

Mr. Peter Kormos: Well, no. Take a look at this presenter's qualifications. You're talking about a highly, highly qualified presenter. I had to concede yesterday that I've determined that actuaries are smarter than lawyers—I made that admission—but here's a highly qualified, competent, capable person. This is expertise. We heard from similar actuaries yesterday—a young man, also a Mercer alumni, Jamie Jocsak from Welland, who said many of the same things.

For Pete's sake, why aren't we listening to these people? Why, at the very least, isn't the government responding to these points and either persuading us that the points are poorly made or wrongly made, or that in fact these people have something? This is so bloody frustrating. These people spend a lot of time preparing this stuff. They come here, they want to be part of a process, they want to make things better in the province. I'm frightened that people aren't going to listen to you; that's what I'm fearful of, sir.

Thank you very much for coming. I appreciate your contribution on this.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos. To Mr. Zimmer.

Mr. David Zimmer: So just on your delay concern, do you know that the act says that the pension administrator has to provide the report within a prescribed period? Are you aware of that?

Mr. David Wolgelerenter: What is that prescribed period and when will the plan member be actually apply-

ing for it, is the question.

Mr. David Zimmer: That leads me to my second question. You're right: You've got a very impressive resumé and you're very knowledgeable. How would you like to work with us on the regulations. It's a compliment to you

Mr. David Wolgelerenter: I appreciate the compliment; thank you. The problem, as I've stated before, is that the regulations can't solve this problem. The act has to be changed in order to solve the problem.

Mr. David Zimmer: How would you like to work with us on some of these matters?

Mr. David Wolgelerenter: I would be happy to.

Mr. David Zimmer: All right. There's somebody at the back of the room there who's going to get your card and speak to you before you leave.

Mr. David Wolgelerenter: Sure.

Mr. David Zimmer: That's "Action this day," as Churchill used to say.

Mr. Peter Kormos: What's your retainer?

Mr. David Zimmer: It's all in the public interest here.

Mr. David Wolgelerenter: Exactly.

Mr. David Zimmer: I'm serious; I'll speak to you. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Zimmer, and thank you, David, on your deputation on behalf of DSW Actuarial Services.

ONTARIO ASSOCIATION OF CHILDREN'S AID SOCIETIES

The Chair (Mr. Shafiq Qaadri): I now invite Ms. Lewis, Ms. Rowden and Ms. Engelking on behalf of the Ontario Association of Children's Aid Societies. Welcome. I invite you to please begin now. Please identify yourselves.

Ms. Jeanette Lewis: Thank you, Dr. Qaadri. I'm Jeanette Lewis, executive director of the Ontario Association of Children's Aid Societies. With me is Tracy Engelking, senior legal counsel at the Ottawa children's aid society and chair of the senior counsel network.

Let me begin by stating that our association supports the principles of Bill 133, which include enhancing the safety of children at risk or who may become at risk; addressing the real concerns about the security and safety of many women and children when partners separate or attempt to separate; and achieving fair, equitable distribution of family assets when partners separate.

The OACAS acknowledges the stress of family breakup. Issues related to violence or threats, unfair division of assets and adequacy of child support are all factors that affect the daily work of children's aid societies. We hope that Bill 133 will effectively resolve some of these problems and that the bill will alleviate some of the factors that contribute to child protection concerns.

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The OACAS respects the expertise of others who can respond with authority to the elements of the bill related to restraining orders, division of family property, pensions, child support and registration of names. We trust that their comments will help to strengthen the legislation.

Our comments are focused on those areas where the child welfare system has expertise, and this includes the four-pronged approach found in sections 6, 7, 8 and 9 of the bill: plan of care, police record checks, CAS record checks, court record checks. OACAS believes that wherever possible, improvements should be addressed in legislation. While we realize that some of the issues may be dealt with in regulation, it is important that those reviewing the draft legislation and those involved in its passage understand what it can do to protect children and what limitations and liabilities exist. The OACAS is committed to continuing to work with the Ministry of the Attorney General and the Ministry of Children and Youth Services to achieve a framework that best protects children.

Now I'll invite Tracy Engelking to address the specific concerns in the proposed legislation.

Ms. Tracy Engelking: Thank you very much. It's a pleasure to be here.

We have provided written submissions, so I don't propose to go over those in detail. You have them available to you. Although we have provided submissions on several aspects of Bill 133, there are two overriding issues with the bill for children's aid societies. They are, firstly, the exclusive reliance on self-disclosure of applicants, essentially to ensure the protection of children, and of course the inherent vulnerabilities that are contained therein; and second, the presumption or assumption that it is relatively easy or straightforward to obtain access to children's aid society information and records.

As Ms. Lewis has referred to the four-pronged approach contained in sections 6, 7, 8, and 9—and I will refer briefly to some of those sections—I can tell you that our overriding preoccupation is of course with section 8, which proposes a scheme relating to access to information from CASs.

With respect to section 6, our comments are on page 2 of our submissions. Again, although this is relating to any applicant, it is based on self-disclosure or self-declaration, so the same issues would be relevant. I echo the comments of the Family Law Association a little earlier with respect to—some of them may just be capacity issues: a person's capacity to put forward that information, and that they will require significant assistance, as applicants, to do that. The other issue, of course, is with respect to reliability of that self-disclosure.

Then, also, as it relates to section 6, there are issues with respect to the reference to involvement in proceedings. It's just a cautionary note for the committee that the vast majority of involvement that people have with children's aid societies is not in-court proceedings. It relates to voluntary involvement or, indeed, child protection investigations.

With respect to section 7, this is for non-parent applicants, and some of the same issues may arise with respect to definition of "records." There is of course a criminal record check, which is an RCMP record, and then there are police record checks and occurrence records, which are involvement with the police, so they could require some clarification with respect to section 7.

With respect to section 8, our submissions are on page 3 of the submission. Our position is that if we are attempting to do this to ensure that a judge has access to all of the information they will need to make a decision in the best interests of the child, we need to do it effectively and efficiently.

There are, as you know, 53 children's aid societies in the province of Ontario. They all keep their own records; they all keep them differently. Many will keep them in the name of the primary caregiver, which is usually the mother, so a non-parental applicant may or may not show up in a records check for a CAS. There is no overall comprehensive system that is provincially based, although the single information system is something that is

a work in progress and we suspect will be a work in progress for many, many years to come in the future. But there is a system that keeps track of who has been investigated, and that system is referred to colloquially as the fast-track system. It will record a person's name, a person's date of birth and a jurisdiction.

A second related issue is that of extraprovincial records. If a person had child welfare involvement in British Columbia, Quebec or New Brunswick, it will not be readily available through any check of any Ontario children's aid society.

If I could just refer to page 3 of our submissions: As I've indicated, a check of an individual CAS will not reveal involvement with another CAS in Ontario. The only way that that will be revealed currently in Ontario is through a fast-track check. So the Ontario Association of Children's Aid Societies is recommending that a mechanism be put in place. Again, if the objective of the amendment to the legislation as it relates to children's aid society records is to ensure that a judge has access to information, then the recommendation of the CAS is that a mechanism be put in place that will allow a fast-track check to be made by some centralized body, be that by the clerk of the court, by a CAS jurisdictionally based where the application is taking place, or by the Ministry of Children and Youth Services, which is where the fasttrack system is housed.

What we see as a potential is for a two-stage inquiry. So the initial request is made through fast-track, and if it reveals the involvement of a children's aid society, then a second stage can take place where the judge can seek records from the particular children's aid society, because fast-track will not provide you with details of the involvement; it will simply advise you that there has been an involvement.

The cautionary note that we have—and much of this is contained on page 4 of our submissions—is that, as I indicated, CASs keep records differently and, additionally, they may have different search mechanisms in terms of whether you will be able to actually access information on the person that you're looking for the information for. Again, as the Family Lawyers Association indicated earlier as well, names change and partners change and people moving in and out of the house change. So getting access to information on all the people you will need access to may prove challenging as well.

We, therefore, recommend that any legislation which is seeking records from a CAS through the mechanism that is contained in Bill 133 include a provision that saves children's aid societies from liability if that information is missed, because there's every potential for that to happen, based on how the records are kept. As well, records are mixed, so they would have other people whose information perhaps should not be put in the hands of the applicant or before the court contained in the records as well. So there are privacy issues.

1720

The other issues have to do with—and Ms. Lewis suggested that we would like as much to be covered in legislation as is possible—some clarification with respect to what we mean by "records": records of an adult, records of a child? What do we mean by "opened file"? All of that is contained in our submissions.

The other recommendation that we have, and it's not something that will be a surprise to you, is that we anticipate that this will require increased resources to children's aid societies if they are going to have to be responding to requests from an applicant in a custody situation and to requests from a court in a non-parental custody situation to respond to their search for records.

There are issues with respect to the sharing of information between children's aid societies and the fact that part 8 of our legislation has never been proclaimed. We are dealing with that as it relates to a review of our legislation, but it is related to this issue as well.

I think we want to reiterate that no system will be foolproof and that whatever mechanism you put in place may not achieve the results in terms of being able to identify in the specific records.

In conclusion, as Ms. Lewis has indicated, we fully support the principles of the bill insofar as they're intended to protect children from harm. Our position is that there are risks as they relate to self-declaration and also, perhaps, to the adequacy of the plans of care that are provided. There is clarity required with respect to what you mean by a police record and there are significant gaps in the ability of a CAS to check records without the use of the fast-track system, though, as I've indicated, self-declaration is probably the only way to get at records that are extraprovincial. Again, there's just the caution to the committee that the vast majority, 75%, of child protection involvement is not in court proceedings.

OACAS is committed to continuing to work with the Ministry of the Attorney General and with the Ministry of Children and Youth Services to achieve the best possible outcomes for children.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Engelking and Ms. Lewis. We've got a minute and a half per side, beginning with Mr. Kormos.

Mr. Peter Kormos: I'm fine, thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos. To the government side.

Mr. David Zimmer: Thank you, Chair.

I know that you were sitting there while we had the presentation from the family law association.

Ms. Jeanette Lewis: Family Lawyers Association.

Mr. David Zimmer: I'm sorry; Family Lawyers Association. You heard their concerns about what should be disclosed, that not necessarily everything should be disclosed. What do you have to say about their concerns?

Ms. Tracy Engelking: I would concur that there are privacy issues in relation, as I've indicated, to other people whose information would be contained in our records and who may not be involved in the proceeding that's before the court. So that's certainly something that

would have to be sorted out, and I don't think it's clearly sorted out by the way the bill is written right now. So I would share that concern.

Mr. David Zimmer: What do you think about the narrower issue; that is, the disclosure of any relevant information to the judge by the—I'll refer to them as the custodial applicant?

Ms. Tracy Engelking: I guess the challenge is to—

Mr. David Zimmer: As opposed to other people who may be mentioned in the same report.

Ms. Tracy Engelking: Right. The challenge is relevant and the challenge is the vetting process, which is why I have said that that will mean increased resources for children's aid societies. If we're going to spend time vetting our files to be able to provide it to a custody applicant or a court in a custody application, it will require resources to do that. Our files are voluminous oftentimes, and mixed, as I've said, and partners change and jurisdictions change.

Mr. David Zimmer: So your concern is not so much—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Zimmer, Mrs. Elliott.

Mrs. Christine Elliott: Thank you very much for your presentation. I think it's really critical that you're here today, and I thank you for that, given the role that you are being asked to play in this bill.

You've made some really critical recommendations for change here—and the overall conversation about the self-reporting. Even if these recommendations were taken into consideration, would you still feel comfortable with the system as set up, or would you prefer a system where, as the Family Lawyers Association have recommended, we proceed to have the Office of the Children's Lawyer investigate? I'd really appreciate your comments on that.

Ms. Tracy Engelking: I'm not sure that we can comment clearly on a proposal that the Office of the Children's Lawyer investigate. When they do investigate, there is a mechanism in place for them to have access to our records. But, as the Family Lawyers Association indicated, currently their involvement is discretionary. I think it varies from jurisdiction to jurisdiction as to when a children's lawyer will even be appointed or when an assessment from a children's lawyer will be ordered by the court. It's certainly different in our jurisdiction than in some others, with respect to what age the children are and whether they can reasonably instruct counsel and things like that, as opposed to an automatic appointment.

Mrs. Christine Elliott: But the self-reporting aspect of it seems to still be a concern of yours. Even when you set all these systems up in place, it really depends on that. Is that something that we should be depending on? Isn't that somebody who may have something—

The Chair (Mr. Shafiq Qaadri): With regret, Mrs. Elliott, I'll have to intervene there and thank you, as well as Ms. Lewis and Ms. Engelking from the Ontario Association of Children's Aid Societies.

ABORIGINAL LEGAL SERVICES OF TORONTO

The Chair (Mr. Shafiq Qaadri): I'd now invite our final presenter of the evening, and that is Mr. Jonathan Rudin of Aboriginal Legal Services of Toronto.

Welcome, Mr. Rudin. As you've seen, you have 20 minutes in which to make your presentation, which begins now.

Mr. Jonathan Rudin: I'd like to thank the members of the Standing Committee on Social Policy for this opportunity to present our perspective on Bill 133.

My focus today will be narrow. It will be regarding the amendments to the Children's Law Reform Act regarding the information required when a non-parent applies to the court to seek custody of a child.

Before I begin my substantive submissions, I want to provide a little bit of background about Aboriginal Legal Services. ALST was founded in 1990. One of the main objects for which we were incorporated was to assist aboriginal community members in exercising control over the justice-related issues and factors that affect them.

ALST operates five main programs: the court worker program; the Gladue aboriginal persons court program; the community council program; the Kaganoodamaagom program, which is our victim rights program; and the legal representation program.

Our court worker program includes criminal, youth and Family Court workers. Our Family Court worker assists aboriginal people in many different areas, including referring clients to duty counsel and advice counsel, and helping individuals understand the process that they need to follow in order to gain custody of a child that they are not a parent to.

In addition to our English name, by way of a traditional naming ceremony, we received an aboriginal name: Gaa kina gwii waabamaa debwiwin, which translates as "all those who seek the truth." We do not see this so much as a description of what we do; rather, it's a direction to us to try to find the truth in the various endeavours that we undertake, and it's in that spirit that we appear before the committee today.

The proposed amendments to the Children's Law Reform Act were developed to try to ensure that the courts had the necessary information they required before making important decisions about whether a non-parent would have the care and custody of a child. The need to keep children safe is a vital one, and all of us share responsibility for that.

Our concern with the proposed amendments, however, is that they may not in fact accomplish their desired goals; rather, from our perspective, they may discourage worthy aboriginal individuals from seeking custody of children.

We have two specific concerns with regard to the legislation. First, if the implementation of the legislation is not carefully undertaken, it may simply discourage many competent aboriginal caregivers from applying to

the court for custody of children because of things they have done or things that have happened to them in the past. Second, the fees associated with things like CPIC checks, if forced to be borne by applicants, may discourage aboriginal people on social assistance from even applying to the courts.

1730

I'd just like to give a little bit of background on these issues before I go back to the substantive submissions. First of all, traditionally, aboriginal people have taken a broad view of who can and should be responsible for raising a child. That expression, "It takes a village to raise a child," is an African expression, but aboriginal people, as indigenous peoples, share that viewpoint. The perspective does not just have historical weight; it's true today. Aboriginal children are often raised by aunties, uncles, grandparents, nephews and nieces. Non-nuclear family arrangements are quite natural for aboriginal families.

Also, what must be kept in mind is that socio-economically, aboriginal people are at the bottom of the ladder in Ontario and in Canada, and this is true of aboriginal people who live on reserve and aboriginal people who live off reserve. Basically, whatever people don't want, aboriginal people have more of, and whatever people do want, aboriginal people have less of. In particular, in the context of this legislation, aboriginal people have less income than non-aboriginal people and are thus more reliant on social welfare payments.

In addition, as a result of government-sponsored practices such as the residential school system, aboriginal people are overrepresented in the criminal justice system and in the child welfare system. In other words, it's more likely that an aboriginal person would have a criminal record than a non-aboriginal person, and it's more likely that an aboriginal parent will have had dealings with a child welfare authority than a non-aboriginal parent.

Finally, to put these submissions in context, one of the notions that's central to aboriginal culture and traditions is the notion of healing. There are restorative justice programs that are becoming quite prevalent for all peoples across Ontario, and many of them trace their roots to aboriginal practices and values. At the heart of restorative justice and healing processes is the knowledge that people can and do change; that a person cannot be understood simply by reading their criminal record or knowing that they have had a child apprehended. Indeed, many of the respected elders in the aboriginal community have had times when their lives were not exemplary. It's the fact that they've completed a healing journey that makes them so respected in the community.

At ALST, our aboriginal justice program, the community council relies on a dedicated group of volunteers who meet with offenders to share the stories of their lives and to help put these people on a healing path. One of the reasons they're so effective in their work is that they understand, from a very real personal sense, what people in trouble with the law are going through and similarly

what's happening with people involved with children's aid and child welfare authorities.

Given these considerations, let me turn to the two concerns we have with Bill 133.

The amendments to section 1 of the Children's Law Reform Act will require individuals who are not parents of a child, but are seeking custody of a child, to provide to the court a CPIC record, and they must request of certain children's aid societies that any records they may have regarding them be provided to the court.

We understand why this information is being sought. Certainly, there are circumstances where the fact of a person's prior criminal record or involvement with a child welfare agency would be relevant considerations in the determination of the suitability of a parent. At the same time, I think we all can recognize that the simple fact that a person has a criminal record or has had dealings with a child welfare agency should not bar them from ever raising a child. We would urge the committee to ensure that it is understood by everyone involved in the process that having a criminal record or a history of involvement with child welfare is not necessarily an absolute bar to gaining custody of a child. In addition, it's important that all information packages and forms that individuals are required to fill out to gain custody of a child make that explicitly clear.

As an example, at ALST we require CPIC checks for individuals who are volunteering with our community council program. On our application form we state, "For the safety of our adult and youth participants, we do require a criminal reference check. A criminal record does not prevent a person from becoming a volunteer."

We've never had any objections by anyone to obtaining a criminal record check under those circumstances but, of course, those individuals know they're applying to volunteer with an aboriginal organization that's aware of the dangers of over-reliance on things like CPICs. An aboriginal person may well feel much less comfortable when applying to the court to gain custody of a child, knowing that this information is required of them; therefore we stress the importance of making it clear that this is simply one bit of information that will be factored into the decision of whether a person can obtain custody of a child.

The reason this is important is because it must be kept in mind that many child custody arrangements are informal. Approval by the courts is not required for a person to parent a child. Court approval can certainly make it easier for the non-parent who has custody of a child, but it's not essential. If the criminal record and child welfare checks are seen by potential caregivers as bars to approval by the court, what will occur will be a rise in informal child custody arrangements. An increase in this phenomenon does not make children safer, although it does insulate the court and court personnel from any accusations if something tragic occurs with the child. The purpose of this legislation, however, should not be to shield court personnel but rather to protect children.

Now, as I mentioned, not all child custody arrangements are approved by the court. In our experience in assisting aboriginal parents or non-custodial individuals trying to obtain custody of a child, one of the reasons that many aboriginal non-parents seek court approval of their gaining custody of the child is so they can obtain the child tax credit or an increase in their ODSP payments to allow them to better provide for the child. Wealthy parents who can provide non-parents with direct financial assistance do not need to rely on the courts for approval of their arrangements.

This, then, leads to our second concern: the cost. This may not seem like much. A CPIC report costs 30 or 40 bucks to get; it doesn't seem like much. But if a non-parent is seeking custody and they, for example, are on social assistance, where are they going to get that \$30 or \$40 from? If we truly wish to encourage all potential individuals who can look after a child to take on that responsibility, then it's vital that Ontario Works and the Ontario disability support plan provide the money necessary as a supplement for a person seeking custody of a child to obtain a CPIC check. It would be cruel to force a person on limited means and fixed income to bear that cost on their own.

We realize that the purpose of these amendments was not to make it more difficult for aboriginal people to obtain custody of children, but we also know that aboriginal people can be and are adversely affected by rules and regulations of general application. We're concerned that without consideration of the particular needs of aboriginal people, they will find it more difficult to obtain custody of children than non-aboriginal people. That would further perpetuate systemic discrimination against aboriginal people and would simply be wrong.

Thank you for allowing us to make this submission.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Rudin. We have about three minutes per side, beginning with the government. Mr. Zimmer?

Mr. David Zimmer: You know, you raise a very interesting point in your submission here, that the aboriginal community—just let me refer to it here—has a broader view of who can and who should be responsible for raising a child. I suppose that also applies to a number of other, more recent immigrant groups to Canada from different parts of the world. Frankly, I hadn't thought of it from that angle.

But to your concern about the records being produced and reports of the children's aid society being to the detriment of the parent applying or the custodial applicant applying, isn't what we're trying to do here what best meets the needs of the child? That being the case, isn't it best to get all of the information on the table and then let a judge assess it? The judge may accept parts of it, all of it, none of it—whatever. But isn't that the assessment process?

Mr. Jonathan Rudin: There's no question. But this is the difficulty: If an aboriginal parent thinks, given their experience with the world—and it's not an untoward assumption—that the fact that they have a criminal record means they will be judged more harshly and that they won't be considered, then what will happen is people won't apply to the courts; there will be informal arrangements made and people won't bother going to the courts. If no one goes to the courts, then there's no screening. That's why we say it's essential that all the documents, everything that's produced—and I realize that on one level, this is beyond a regulation, but all the documents have to make very clear that if you have a criminal record, that's not setting you up for a no. If people think it's setting them up for a no, if people think involvement with child welfare sets you up for a no, then the people won't apply.

Mr. David Zimmer: And essentially, that's a communication issue between the system, if this system is adopted, and getting that message out that, "Look, give us all the information," and what's in the information is not necessarily a bar; that's up to a fair-minded judge to assess in the best interests of the child.

Mr. Jonathan Rudin: It's vital that information get out, and in fact I think it's vital that it starts now, because people already are starting to think that they're going to have to provide this information.

Mr. David Zimmer: So what kind of a communication process would you see, from your experience, in getting that information out to custodial applicants?

Mr. Jonathan Rudin: Well, I-

The Chair (Mr. Shafiq Qaadri): I'll have to intervene there. Mrs. Elliott, please.

Mrs. Christine Elliott: Thank you very much for your comments and for representing the concerns of aboriginal people. I appreciated your concerns.

Again, following the line that Mr. Zimmer was speaking about with respect to the concern that if there had been a criminal conviction, you have to disclose that and it has to go before a judge, it also begs the question of, what does a judge do with that? When they get that information, they don't have that background, they don't know how important, how relevant, that may or may not be. So there has been a suggestion—again, I've asked previous people about this—that the Office of the Children's Lawyer be involved with that to help sort through all of that before it gets to a judge. Do you think that would be of any benefit for your clients?

Mr. Jonathan Rudin: I can't actually speak to that. I will say that in our Gladue program, we often produce reports for aboriginal people who are before the criminal courts, and part of the purpose of that is to explain the relevance, the significance, of the criminal record and whether it remains relevant today. I don't know, frankly, whether the Office of the Children's Lawyer is equipped

to provide that sort of information as it relates to aboriginal families.

Mrs. Christine Elliott: I appreciate that. Thank you. The Chair (Mr. Shafiq Qaadri): Mr. Kormos.

Mr. Peter Kormos: I'm inclined to agree with you. Nobody here at Queen's Park had to submit to a criminal record check before they were allowed to take their seat. It might have been an interesting threshold to have to pass.

Interjections.

Mr. Peter Kormos: I want to ask you, when the Office of the Children's Lawyer investigates a matter, is there a fee back to the applicant?

Mr. Jonathan Rudin: No.

Mr. Peter Kormos: Well, you see, this is what makes the judges' proposal all the more interesting. Thirteen Family Court judges in some of the busiest family courts in the country wrote to this committee, saying, "However, an investigation by the Children's Lawyer is, in our view, the clear solution to the problem of custody cases where parties are unrepresented or where an application is unopposed and a judge has reason to be concerned adequate information is not being provided to the court. This solution addresses a critical problem in the courts, while respecting the need for judges to maintain their traditional and crucial role as independent adjudicators in the adversary system." I read that quickly because we've got a tough Chair. Are you inclined to agree with that proposal?

Mr. Jonathan Rudin: Again, I think it is important to have context. I can't say that we think that the Office of the Children's Lawyer necessarily—

Mr. Peter Kormos: Quite frankly, not having a criminal record doesn't say anything either, does it? The fact that somebody doesn't have one doesn't speak to their character—

Mr. Jonathan Rudin: No.

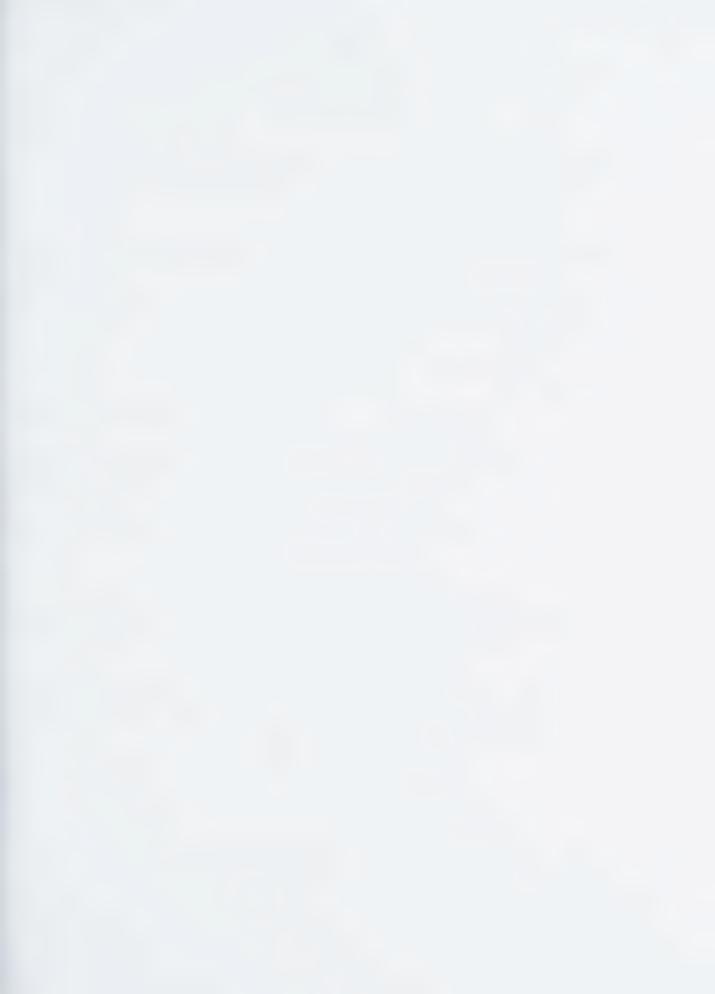
Mr. Peter Kormos: —or lack of propensity for violence etc. Thank you kindly, sir.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Rudin.

Before moving to close the meeting for the day, I will just remark, I think legislative research will probably confirm that criminal checks are party-specific, Mr. Kormos.

Having said that, if there's no further business of this committee, then this committee is adjourned till Monday, March 30, at 2:30 p.m.

The committee adjourned at 1742.



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Family Statute Law Amendment Act. 2009

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Lundi 30 mars 2009

Comité permanent de la politique sociale

Loi de 2009 modifiant des lois en ce qui concerne le droit de la famille

Chair: Shafiq Qaadri Clerk: Katch Koch Président : Shafiq Qaadri Greffier : Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Monday 30 March 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Lundi 30 mars 2009

The committee met at 1431 in committee room 1.

FAMILY STATUTE LAW
AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT DES LOIS
EN CE QUI CONCERNE
LE DROIT DE LA FAMILLE

Consideration of Bill 133, An Act to amend various Acts in relation to certain family law matters and to repeal the Domestic Violence Protection Act, 2000 / Projet de loi 133, Loi modifiant diverses lois en ce qui concerne des questions de droit de la famille et abrogeant la Loi de 2000 sur la protection contre la violence familiale.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, colleagues, I welcome you to the Standing Committee on Social Policy. As you know, we're resuming consideration of Bill 133, An Act to amend various Acts in relation to certain family law matters and to repeal the Domestic Violence Protection Act, 2000.

Just on behalf of all committee members, I'd like to welcome to his very first, no doubt, of an endless series of committee meetings the honourable Rick Johnson, newly elected MPP from the riding of Haliburton–Kawartha Lakes–Brock. With that, I—yes, Mr. Kormos?

Mr. Peter Kormos: Now come on, did you want people to be told when your very first patient walked into your office as a medical doctor? Did you want them to know that that was your very first diagnostic exercise? Mr. Johnson's acclimatized well in the week and a half that he's been here, and it's about time he was in committee.

The Chair (Mr. Shafiq Qaadri): We all thank you for that vote of confidence, Mr. Kormos.

I'd now like to advise the presenters of the protocol for today. We'll have 20 minutes per presentation for organizations; 15 minutes for private individuals.

YWCA TORONTO

The Chair (Mr. Shafiq Qaadri): To begin with, I would now invite our first presenters of the day, Ms. Dale and Ms. Cross of the YWCA Toronto. As you no doubt know, any time remaining within the 20 minutes will be distributed evenly—and vigorously enforced—amongst the three parties. I invite you to begin now.

Ms. Pamela Cross: Good afternoon. My name is Pamela Cross. I'm a lawyer, and I've been working in the field of violence against women for many years as an activist, an educator and a law reform advocate. My years as a family law lawyer representing abused women have given me extensive opportunities to observe and analyze the frustrations many of them experience in the family court system and the ongoing safety issues that confront them.

Ms. Amanda Dale: I'm Amanda Dale. I'm the director of advocacy and communications with YWCA Toronto. I've been working to end violence against women since 1983, first of all in shelters, later doing research, and now most focused on systemic advocacy. My organization has 38 member associations across Canada; we have 14 in Ontario. We have more than 25 million members in our association worldwide. We are the largest single provider of shelter and housing for women in Canada.

Across all of our programs, the most common factor limiting women's engagement with their community, their family, their career or their potential is the reality of violence in their home and the control over their decision-making and autonomy in dispute, custody or immigration matters.

We're here today to speak strongly in support of Bill 133; in particular those provisions dealing with restraining orders.

We would like to say at the outset that we approach our work as women's advocates in a very pragmatic and non-partisan way. We're interested in supporting legislation that is good for women and their children, regardless of the government in office at the time it is developed. Indeed, we have been part of consultations about restraining orders in particular through more than one government in this province—probably three, in fact. We urge the committee to set aside partisan point-scoring to hear what we have to say from our considerable experience in this area.

Ms. Pamela Cross: Abused women and their children in Ontario have long been frustrated by the restraining order legislation currently provided under family law. Restraining orders often contain conditions that are difficult to understand, the police are often reluctant to enforce the orders, and the consequences to an abuser who has breached a restraining order are generally minimal. As a result, women and their children do not get the safety they deserve, and abusers are not held

accountable for their actions. YWCA Canada research recently conducted shows that women who enter a shelter are at a 75% risk rate for fatality on standardized tests. Clearly, this is a matter we wish to find the most precise solution to.

For this reason, we do not support any move to maintain the Domestic Violence Protection Act. While women's advocates initially supported this legislation, it quickly became apparent to us, as the regulations were being developed, that it was essentially unworkable and not helpful to women. We don't want to take too much time today to talk about an old piece of legislation, but since we know that some committee members may favour the DVPA over Bill 133, we would make the following comments.

It's certainly true that the DVPA offers the possibility of 24-hour-a-day access to emergency protection orders. This is emotionally attractive, especially if we consider the picture of a terrified woman being threatened by her abuser in the middle of the night. However, the facts just don't support this picture. First, according to the evidence of the domestic violence death review committee, women are not killed because they could not get a restraining order in the middle of the night or on the weekend; they're killed after they get a restraining order, because the police either do not enforce it or are not able to enforce it properly. Second, if a woman is in such a dangerous situation in the middle of the night, she should be calling the police to have criminal charges laid against her abuser. This will ensure that he is taken into custody and held there until a bail hearing, at which time, if he's released, he'll be subject to a criminal no-contact order.

Third, under the DVPA, a woman who wishes to obtain an emergency protection order outside regular court hours must contact the police to do so. If the situation is serious enough to warrant an emergency protection order, it will be serious enough to warrant criminal charges, and so the EPO is an unnecessary step.

Finally, with respect to the DVPA, many women in Ontario do not want their partners charged criminally. These women would never use the EPO provisions of the DVPA because of the requirement that they work through the police to get one.

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Ms. Amanda Dale: We acknowledge that many provinces and territories have legislation similar to the DVPA. However, in our conversations with women's advocates in those parts of the country, we hear many concerns and complaints about how poorly women are served by these laws. In fact, I have just returned from seven months in Nunavut working on the development of a women's shelter, where Pam actually joined me just last week. Both of us met with government lawyers, legal aid lawyers and women's advocates in Iqaluit to talk about Nunavut's Family Abuse Intervention Act.

The room was unanimous in its early skepticism that FAIA plays any visible role in keeping women and their children safe, and that, at times, it may actually confuse women, police and advocates with mutually contradictory areas of law and interfere, therefore, with women's ability to leave their abuser and move on to safety. In addition, real-life lack of enforcement is actually the gap that puts paid to the act's good intentions. We believe that Bill 133 addresses the core of women's vulnerability to murder and can do so with clarity and effectiveness.

Ms. Pamela Cross: Reports of the Domestic Violence Death Review Committee have identified key commonalities across homicides of women by their partners or former partners. In more than 90% of the cases reviewed, the homicide was preceded by violence and/or abuse in the relationship. Significant risk factors found across these homicides include recent or pending separation in more than 80% of cases and custody and access disputes. Further evidence of this ongoing abuse that women experience even after a relationship ends can be found in research conducted recently by Luke's Place Support and Resource Centre for Women and Children in Durham region. This research project gathered information from women, service providers, lawyers and judges about the experiences of abused women who must handle their Family Court proceeding without legal representation. That research established that more than 60% of unrepresented, abused women going through Family Court feared for their lives because of the ongoing violence and threats of their former partner.

Ms. Amanda Dale: Clearly, women and their children need the best protection we can offer them to make them able to feel safe enough to leave an abusive relationship, deal with their legal issues and move on to lead lives free from violence. As noted above, many women turn to family law restraining orders to assist them in staying safe. Bill 133 takes a number of significant steps to make the existing system of Family Court restraining orders work better than it does now.

Ms. Pamela Cross: We'd like to first address the issue of enforcement of restraining orders. Historically and presently, one of the biggest difficulties for a woman who has received a restraining order is effective enforcement. Right now, a breach of a restraining order is punishable under the Provincial Offences Act. Bill 133 would make a breach punishable under the Criminal Code. This is of critical importance to keeping women alive and safe.

With these changes to the legislation, a man who breaches a restraining order could be arrested by the police, charged with a criminal offence and held for a criminal bail hearing. His case would then proceed in criminal court and, if he were to be found guilty, he would be liable to potentially more serious penalties than are available under the Provincial Offences Act.

This can improve women's safety in at least two ways: First, men may take the restraining order more seriously knowing that they face a possible criminal conviction if they breach; and second, when there is a breach—and there are often breaches—the man will have to appear for a criminal bail hearing and may be held in custody until trial. This can give his former partner the time she needs to create and implement an effective safety plan.

We know that some submissions have raised a concern that judges may be reluctant to issue restraining orders knowing that a breach could lead to a criminal charge. Our response to this concern is that this doesn't mean we change the legislation; it means we ensure appropriate education opportunities for judges.

Ms. Amanda Dale: We're also pleased to see that Bill 133 broadens the categories of people who can apply for a restraining order. The Family Law Act currently restricts restraining orders to spouses, former spouses or people who have cohabited for at least three years. Bill 133 expands this to include people who have lived together for any period of time. This is far more realistic for what we see in our services, and this will ensure that women, no matter how short-lived their cohabitation agreement, can have access to the safety of a restraining order. Young women who are in the age group at highest risk of lethal violence in their relationships will particularly benefit from this amendment.

Ms. Pamela Cross: A third important area of reform is that of the evidence required. The language contained in Bill 133 maintains the Family Court "on a balance of probabilities" standard of proof while also making it clear that it is the woman's own reasonable grounds of fear for her safety that is to be established, not the opinion of any third party. Bill 133 also provides specific provisions to assist judges in determining the appropriate conditions to place in the restraining order.

We're also really interested in the bill's provisions that would limit inappropriate behaviour in situations where the woman does not necessarily fear for her safety. These provisions should be of great assistance to women whose partners use the Family Court proceedings as an opportunity to engage in ongoing legal bullying, a very, very real problem in a significant number of cases. In these cases, where the judge makes an order with respect to appropriate behaviour and it is breached by the abuser, it would provide good evidence to support any application the woman might decide to make for a restraining order in the future.

We mostly came here today to talk to you about the restraining order provisions of Bill 133, but we'd like to comment extremely briefly on some of the other provisions. We strongly support the requirement that evidence be provided in all custody cases, even where the parties are consenting to an order. We're also in agreement with the provision that further evidence, the results of a recent police and child protection records check and information about current or previous Family Court proceedings be required where the person seeking custody is a non-parent. Taken together, these changes will increase the safety of children, particularly in cases where non-parents are seeking custody.

Ms. Amanda Dale: We appreciate that government must weigh many competing interests in the development and passage of legislation. We also know that changing a law is only the first step and that both those who apply it and those who seek it must become familiar with those changes before they have any real impact. We can assure

you that Bill 133 takes us a long way in the direction of increasing safety for women and children, thus making it easier for women to leave abusive relationships and move on with their children to lives free from violence.

Ms. Pamela Cross: We strongly urge you to recommend this bill, as written, for third reading, and we welcome any questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Dale and Ms. Cross. We have about two and a half minutes per side, beginning with Mrs. Elliott.

Mrs. Christine Elliott: Thank you for your presentation. I certainly agree with you that the criminalization of the breach of restraining orders is an important step towards protecting women and children from domestic violence, but I would really appreciate your comments on why it's necessary, in order to bring these provisions forward, to repeal the Domestic Violence Protection Act. It seems to me that the provisions are not mutually exclusive, and I'd really like your further comments on that, if you don't mind, please.

Ms. Pamela Cross: They're not mutually exclusive, but it's our opinion that with the provisions proposed in Bill 133 that would amend both the Family Law Act and the Children's Law Reform Act, the DVPA is simply not necessary at this point. It becomes a piece of legislation that would create the possibility for a process for emergency protection orders that we think is unneeded, and we think everything else that's important in the DVPA appears in Bill 133.

Mrs. Christine Elliott: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Elliott. Mr. Kormos.

Mr. Peter Kormos: Thank you kindly. You're the first presenter here who has raised this concept of legal bullying, and I'm surprised that it hasn't been addressed before. Every town has at least one lawyer who purports to be a family law practitioner, who's the hired-gun approach, right? He'll motion an interim order and appeal and appeal and appeal the other party, usually the woman, because it's usually men who get these lawyers acting for them. How should that be controlled? Why isn't the law society taking a stronger interest, for instance, because much of that legal conduct on behalf of that practitioner is unethical conduct as well, isn't it, especially in a family law context?

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Ms. Pamela Cross: What's interesting in what you're saying is that if you look at the stats now in terms of who's in Family Court, who's represented and who's not, we've got some pretty staggering figures. About 65% of parties are unrepresented. The most serious legal bullying is taking place and being perpetrated by people who are unrepresented. In the amount of time we have this afternoon, I'm not going to get into a conversation with you about what the law society should be doing to better govern lawyers. It's an interesting conversation.

Mr. Peter Kormos: How else are we going to address legal bullying?

Ms. Pamela Cross: Most of it's being done by unrepresented litigants; it's not lawyers who are doing most of it.

Mr. Peter Kormos: No? What about the lawyers who do do it?

Ms. Pamela Cross: Well, something should be done. That's a conversation for another bill, I think.

You're not going to entice me into a conversation about that. We only have a couple of minutes here.

Mr. Peter Kormos: You raised the issue, and I thought we've got to address it, because I found it interesting—

Ms. Pamela Cross: The most serious legal bullies are abusive men who are in Family Court unrepresented. We need to shut them down through proper legislation that limits their ability to harass.

Ms. Amanda Dale: Like what's being proposed.

Ms. Pamela Cross: That's right.

The Chair (Mr. Shafiq Qaadri): I take that grimace as the end of your remarks, Mr. Kormos?

Mr. Peter Kormos: I wanted to know about legal bullying, and I've heard these ladies' responses.

The Chair (Mr. Shafiq Qaadri): No, I appreciate that. Have you completed your questioning?

Interjection.

The Chair (Mr. Shafiq Qaadri): Thank you. To the government side: Mr. Ramal.

Mr. Khalil Ramal: Thank you very much for your presentation. It's unique because, as Mr. Kormos and Mrs. Elliott mentioned, you focused on restraining orders.

Many people spoke before you. Probably you read all of the presentations. Some of them who came and presented to us said that this bill is not strong enough, it's flawed, even though they support it to a certain degree. Then you came and strongly supported the bill, but you think that broadening the scope of restraining orders will protect women. Why is that, in your opinion? Just to focus on one element among many different elements being proposed in this bill, you thought restraining orders were the best one to protect the family.

Ms. Amanda Dale: The evidence shows us that's most often where the breach occurs and where the most devastating crimes occur. That's most often when murder occurs. The evidence that we've presented to you today from the domestic violence review committees and the evidence that we've gathered from doing post-shelter analyses of what happens to women across Canada shows that in terms of the criminal justice side of the social system, that's where the biggest breach is.

Mr. Khalil Ramal: And you think if this bill passes as it is, it will serve the purpose and create a safety mechanism for women and children in the province of Ontario?

Ms. Amanda Dale: Well, we're confident that this is a strong step forward. If it doesn't work, we'll be back here.

Mr. Khalil Ramal: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Ramal, and thank you, Ms. Cross and Ms. Dale, for your deputation and presence on behalf of the YWCA Toronto.

HOSPITALS OF ONTARIO PENSION PLAN

The Chair (Mr. Shafiq Qaadri): I'll now move directly to our next presenters, Mr. Hills and Mr. Miller of the hospitals of Ontario pension plan. Gentlemen, I invite you to be seated. As you've seen, there are 20 minutes in which to make your combined presentation. Your written deputation is being distributed as we speak. I invite you to begin now.

Mr. David Miller: Good afternoon. My name is David Miller, and I'm senior vice-president and general counsel with the hospitals of Ontario pension plan, or HOOPP. Here with me is my colleague Graham Hills, HOOPP's director of policy development.

I know I've met some of the committee members before—recently at Queen's Park, in fact—and hopefully you'll recall or otherwise be aware that HOOPP is a large, multi-employer, defined benefit pension plan with almost 250,000 members and pensioners, over 330 participating Ontario health care sector employers and close to \$30 billion in pension assets. I believe HOOPP is the fifth-largest pension plan by asset value in Canada.

HOOPP is pleased that the Ontario Legislature has provided to us and to other pension stakeholders and interested parties the opportunity to provide input on Bill 133. We believe the government of Ontario has taken an important step in bringing this bill forward, and we're grateful to the government, to the Law Commission of Ontario and to you as members of this standing committee for being so consultative in the various stages of law reform that have led us to being here today.

Through Mr. Koch, we've distributed to the members of the standing committee copies of HOOPP's written submission on Bill 133, along with copies of our 2008 submission to the Law Commission of Ontario entitled Division of Pensions Upon Marriage Breakdown.

Just like HOOPP's written submission on Bill 133, I want to limit my remarks today to those parts of the bill that relate to the splitting of pensions on marriage breakdowns and also to those parts which are of particular relevance to HOOPP, its beneficiaries and other stakeholders. Specifically, I want to focus on four of the bill's features: first, the immediate settlement method; second, the method used for determining the value of a member's benefit for family law purposes; third, the application process and use of prescribed forms; and fourth, the discharge of plan administrators.

Turning to the first of these features, the immediate settlement method, HOOPP supports the government's decision to table a bill that endorses and adopts an immediate settlement method or, as it's called, an ISM. HOOPP holds the view that ISM is the most balanced, fairest and most efficient method of dividing pension entitlements in family law cases. The ISM method is also

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easiest for the parties to understand and will undoubtedly simplify the administration of DB, or defined benefit, plans. Under ISM the non-member spouse would have immediate access to his or her share of the pension benefit. We believe this change is long overdue. Under the current system, a non-member spouse is often forced to wait years, sometimes even decades, before receiving their share of the benefit. This method of settlement is also fair to the entire pension plan membership because it effectively addresses the concerns of their plan administrator, who currently bears the responsibility, the costs and the risks associated with interpreting domestic contracts and court orders and administering the divided pension for the benefit of non-member spouses.

Turning to the second feature, the valuation method, HOOPP strongly prefers the termination method of valuing accrued benefits in order to complete pension divisions in family law cases. The termination method, of course, means the pension benefit and the non-member spouse's share are valued as if the member had terminated employment on the date of separation. Under this method, the non-member spouse would receive a portion of the commuted value or the lump sum value accrued by the member during the period of marriage. This amount could then be transferred to a locked-in vehicle to provide the former spouse with his or her own personal retirement income. In turn, the member's pension would be actuarially reduced in order to fund the value of the non-member spouse's share that is paid out.

HOOPP submits that a non-member spouse's relationship to the plan, and therefore his or her entitlements which result from family law proceedings, most closely resembles the position of a member who terminates from the plan. Non-member spouses are not plan members nor, in most cases, do they remain plan beneficiaries. Accordingly, HOOPP believes it is fairest that they be treated as closely as possible as if they were members terminating from the plan.

We believe that the value of pension benefits for family law purposes under the bill should be determined by employing a simple variation of the pension plan's commuted value formula used to calculate benefits payable to terminating members. The current method of calculating the commuted value of a deferred pension is prescribed by regulations currently under the Ontario Pension Benefits Act, and this prescribed method had been developed by the Canadian Institute of Actuaries. It's pretty straightforward, as straightforward as it can be for use. HOOPP strongly believes that benefit calculations that are prescribed for family law cases should also be performed by plan administrators. We're more than capable of doing this. Plan administrators are already responsible for performing various calculations for retirees, terminating members, surviving spouses and beneficiaries.

There's an argument that the termination value approach is unfair to the non-member spouse since the CV, or commuted value, calculation is the same amount the member would receive if membership had been termin-

ated at the valuation date. We however think the termination method of valuation is fairest to all concerned. HOOPP believes the former spouse shouldn't benefit from post-separation increases in the value of the pension that are attributable to the member's post-separation salary increases which the member himself or herself would not be entitled to realize in the event their membership in the plan terminates.

HOOPP believes that a hybrid termination or retirement valuation method could lead to inequality in favour of non-member spouses, as they could receive benefits from the plan using a calculation that would consider future benefit accruals that the member himself or herself would not be entitled to receive if he or she terminates plan membership.

Turning to the third feature, that of the application process and use of prescribed forms: HOOPP supports the creation and prescription of forms that facilitate, clarify and simplify pension divisions and lump-sum transfers to non-member spouses. The result should be an easing of the administrative burden and a reduction in the associated costs. Such forms would eliminate the need for administrators to interpret court orders and domestic contracts, which are, in many cases, not as clearly or consistently drafted as they could be.

The final point, the discharge of pension plan administrators: On this subject of discharge, we'd like to confirm HOOPP's support of the inclusion of the discharge clauses in the bill. An opportunity for a plan administrator to receive a full statutory discharge on the proper completion of a pension division is hugely important to plan administrators and, indirectly, to the plan members as a collective.

In closing, HOOPP supports the pension-related changes that are set out in Bill 133. Once again, we'd like to thank the Ontario government for tabling the bill and this committee for giving us this opportunity to speak to some of its features. I hope my remarks have been helpful. Once the bill is proclaimed, and we truly hope it will be, HOOPP will be pleased to participate in any further consultations to assist with the design of regulations and prescribed forms in particular.

That concludes our presentation, and we'd be happy to answer any questions you may have.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Miller. About three minutes or so per side, beginning with Mr. Kormos.

Mr. Peter Kormos: This has been one of the difficult parts of the bill for most of us because it's so complex and so far removed from most of our areas of—never mind expertise—just plain experience. Why is it that the actuaries are lined up on one side—because they disagree with you; you understand that. We've had some very smart, bright young people in here: Jamie Jocsak, David Wolgelerenter. We had Peter Shena of the Ontario Pension Board basically taking your position, applauding the formula and the methodology approved in this bill. The actuaries say that we can't use a one-size-fits-all

approach. Why is there this division and why is the line drawn the way it is?

Mr. David Miller: You're asking us to speculate

Mr. Peter Kormos: No; there's obviously something going on here, right? There's something going on here. The actuaries are on one side; the pension plan administrators are on another. What's going on? You're all intelligent people.

Mr. David Miller: The bill calls for a fairly fundamental change in the way pension benefits are split under family law cases. We might observe that actuaries make their living from the current calculation method.

Mr. Peter Kormos: And you're going to be allowed to charge for doing what you do under the act, right?

Mr. David Miller: We're not driven by profit; we're simply cost-recovery. And we do these calculations every day. They can be complicated but they're not significantly so that we can't do those—

Mr. Peter Kormos: So the actuaries—it's self-interest that's motivating them?

Mr. David Miller: I'm speculating.

Mr. Peter Kormos: You've heard their arguments. You know their arguments. Are they wrong?

Mr. David Miller: What we're advocating is a better balance in terms of the interests of the plan membership as a whole, which we don't agree should be subsidizing individual members of marriage breakdowns.

Mr. Peter Kormos: But are the actuaries wrong? You've got to help us.

Mr. David Miller: In our opinion, they are on this issue. Yes.

Mr. Peter Kormos: Fair enough.

The Chair (Mr. Shafiq Qaadri): To the government side: Mr. Zimmer. The floor is yours, Mr. Zimmer.

Mr. David Zimmer: No, you've answered the questions. Thank you very much for your presentation.

The Chair (Mr. Shafiq Qaadri): Mr. Ramal.

Mr. Khalil Ramal: Thank you very much for your presentation. I listened to you carefully. I know you think this bill will serve its purpose. As you know, when we introduced this bill, it was the aim and goal from the introduction of the bill to make it simple and easy for people, especially when the split is not going to cost them a lot of money etc., to make it spell out exactly in detail, black and white; there's no difference. So do you think this bill, if this passes as it is, will serve your goal, as a person who's in charge of some pensions and you want to deal with them in a simplified way?

Mr. David Miller: Absolutely, we do. Yes.

Mr. Khalil Ramal: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you for the very crisp line of questioning.

Ms. Elliott.

Mrs. Christine Elliott: Thank you for your presentation. I have two quick questions, one on valuation and one on settlement. With respect to valuation, I see on page 3 of your presentation that you note that, "A valuation completed by an independent actuary could lead to

inequities among members, their non-member spouses and the general membership." Could you just elaborate along those lines and tell me why you think that's so?

Mr. David Miller: I think the theory that actuaries are proposing is that a defined benefit plan doesn't provide former spouses with a sufficient value for the benefit, because if both the former spouse and the member remain in the plan to retirement, the value that will be paid out at retirement will be higher. It's a question of how you value that for family law valuation purposes and the timing of that. I made the point earlier that it's the perception that the plan membership as a whole is subsidizing, to a large extent, the marriage breakdowns of individual plan members by valuing, at a very high level, the portion of the pension benefit that would go to the non-member spouse.

Mrs. Christine Elliott: I guess that sort of leads into my next question on the settlement aspect of it and the idea the actuaries have presented that there should be two values used: one used as the transfer value and the other used as the equalization value for net family property purposes. They are suggesting that if you don't do it that way, it leads to a huge inequity for the non-member spouse. So I guess that there's certainly a discrepancy. The way that you're suggesting suggests that they would be supplemented by the plan; the actuaries are suggesting that they would be treated inequitably if you used anything other than their valuation. Do you see any way for us to resolve that?

Mr. David Miller: There's an assumption there that the member is going to remain in the plan till retirement. In a lot of cases, that happens. There's also the argument that future salary increases for the member, after the date of separation, basically accrue to the benefit of the non-member spouse. I'm not sure, from a family law perspective, whether that's equitable. In some cases, that is subsidized by the entire plan membership, as is administering the former spouse's or non-member spouse's remaining benefit, to the extent that it remains in the plan, and the fact that a plan administrator has to administer that and bear risks associated with that. All of that has to be paid for by the entire collective, the entire membership. Those are the concerns that plan administrators have.

Mrs. Christine Elliott: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Miller and Mr. Hills, for your deputation on behalf of the Hospitals of Ontario Pension Plan.

ONTARIO TEACHERS' PENSION PLAN

The Chair (Mr. Shafiq Qaadri): We'll now move to our next presenters, Ms. Slivinskas and Mr. Harrison, on behalf of the Ontario Teachers' Pension Plan. We welcome you and invite you to please come forward.

As you've seen the protocol, you have 20 minutes in which to make your presentation. I invite you to begin now.

Ms. Anne Slivinskas: Good afternoon. My name is Anne Slivinskas and I am the senior legal counsel for

member services at the Ontario Teachers' Pension Plan board. My colleague Ken Harrison is the director of actuarial, tax and accounts receivable at the Ontario Teachers' Pension Plan board.

We appreciate the opportunity to make submissions on the proposed reforms to the valuation and division of pensions on marriage breakdown. Teachers' is one of Canada's largest defined benefit pension plans. Its members include over 353,000 elementary, secondary and retired teachers, as well as inactive members. With this large membership base and an annual pension payroll of more than \$4 billion, Teachers' has significant experience in the division of pensions.

We have seen first-hand the casualties of the current system, a system which has been widely acknowledged as complex, confusing and unnecessarily complicated to administer. We applaud the Ontario government for taking steps to clarify this unsatisfactory system and in general support the reforms proposed by Bill 133. My submission will focus on the following three points that impact plan administrators: first, the introduction of the immediate settlement method of dividing pensions; second, the expanded role of the plan administrator; and third, the transition provisions. Ken Harrison will then speak to the valuation method.

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Moving to my first point, we welcome the introduction of the immediate settlement method for plan members who separate before retirement, because this option represents a fair and simple solution to the problem of dividing pensions. Spouses of plan members will be able to apply to the administrator for an immediate transfer of a lump sum representing no more than 50% of the net family law value of the member's pension. This is very different from the current pension division rules, which require spouses to defer receipt of their portion of the benefit until a pension payment is triggered from the plan by the member's termination or retirement, or their death.

Under Bill 133, spouses will no longer be held hostage by the member's choice; lawyers will no longer have to draft complicated pension division provisions that address each of these contingencies; and plan administrators will not have to administer these provisions. The immediate settlement method also treats defined benefit pension property in a manner that's consistent with the way that other retirement savings, including RRSPs and defined contribution pension plan benefits, are divided on marriage breakdown. This makes sense from a policy perspective.

Moving to my second point, Teachers' does not oppose the new responsibilities in calculating the net family law value that plan administrators will be assuming. Once the valuation method and the assumptions are set out in the regulations, pension plan administrators would be able to perform these valuations efficiently. We have been calculating the amount of pension that accrues during the spousal period using the termination method, as prescribed by section 56 of the regulations to the

Pension Benefits Act, since that provision was introduced in 1987, and we're capable of calculating the net family law value in accordance with the regulations that will accompany Bill 133.

It's important to note that if this obligation is set out in the Pension Benefits Act, compliance with it by plan administrators will be subject to review by the Financial Services Commission of Ontario, which regulates all registered pension plans in Ontario. If an error in the calculation of net family law value is made, it will be subject to review by this regulator.

With respect to the actual division of the pension after it has been valued and the role of the plan administrator, I cannot stress enough the importance of clear, prescribed forms. Under the current system, one of the greatest burdens for plan administrators is the need to interpret poorly drafted agreements and court orders. This burden could be alleviated if the parties who wish to elect to divide the pension at source complete clear, prescribed forms that solicit all the required information and attach those forms to their agreements or to the court orders. This would also assist the very many plan members and spouses who draft their own separation agreements without the assistance of actuaries and lawyers.

To add further clarity, Teachers' recommends that the wording of the fourth application criterion in proposed subsection 67.3(1) and 67.4(1) of the Pension Benefits Act be amended by replacing the term "formula for calculating it" with the word "proportion." We believe it would be simpler for plan members and their lawyers to state a proportion of the pension to be assigned instead of trying on their own to draft a formula.

Third, the transition provisions: Subsection 67.5(1) of the Pension Benefits Act states that pension division provisions in any orders, awards or domestic contracts filed with the administrator of a pension plan on or after the effective date are limited to two new options: the lump sum transfer for separations that occur before retirement and the division of pension payments for separations after retirement. In other words, this provision prohibits the administration of existing "if and when" divisions that have not yet been delivered to the plan administrator. It doesn't matter if these agreements have been executed; all that matters, under Bill 133, is the filing. We're concerned that the administration of this transition provision will create uncertainty for separating spouses and difficulties for plan administrators.

We note that this will compel everyone with existing separation agreements not yet filed with the administrator to renegotiate and rewrite those agreements. This is unfair to plan members and spouses who have, in good faith, already settled their obligations.

As a result, Teachers' recommends that subsection 67.5(1) be amended by changing the key transition date for family arbitration awards and domestic contracts from the date that those documents are filed with the administrator to the date that those documents were executed by the parties. We note that the filing date doesn't have special significance under the Pension Benefits Act, and

under the current regime, even parties who file agreements and orders with the administrator may wait many years for the pension event that will trigger the assignment of the spouse's share from the plan.

Teachers' also recommends that any amendment to the transition provisions preserve the right of parties to amend their old agreements in order to avail themselves of the new settlement options offered by Bill 133. It would be a shame not to allow consenting couples an opportunity to divide their pensions under the new and improved system.

I will not be making oral submissions on issues of tax, the depletion of pension property before transfer and the technicalities of dividing pension payments and pay, all of which are addressed in Teachers' written submissions. I would be happy to answer any questions that the standing committee may have on those points, following Ken Harrison's submission on the appropriate method for calculating the net family law value.

Mr. Ken Harrison: We note that Bill 133 is silent on the actual method of valuation. We strongly believe that the actual method of valuation should be specified, and as we have stated in other public commentary on this topic, we strongly prefer the termination method of valuation for pension rights for purposes of computing the net family law value.

A variation of the termination method has been successfully adopted in other provinces, most notably Quebec. The Pension Benefits Act requires that commuted values payable on termination be calculated with the Canadian Institute of Actuaries' standard of practice for determining pension commuted values. If the methodology and assumptions are clearly prescribed, the results are the same regardless of who does the calculation, since there is no actuarial judgment involved. We believe this kind of certainty is a desirable goal. Since plans already have the systems in place to do this type of calculation, compliance will be easy and more cost-effective than if a different calculation basis is prescribed.

A valuation method that provides a spouse with a value higher than the termination value would require assumptions about future events such as projected date of retirement. Any discrepancy between these assumptions and the actual experience may cause an unfair result. For example, as shown on page 3 of our submission, a hybrid valuation may assume that the separated plan member will work continuously until the earliest unreduced date and therefore value them, at family law value, at \$600,000, which is higher than the commuted value of \$400,000. Under this scenario, the spouse would apply for a transfer of 50% of the net family law value, or \$300,000, leaving \$100,000 in the plan for the member. Should the plan member terminate employment or die before the assumed date used in the net family law valuation, he or she or their estate will be disadvantaged. In the example above, if the plan member terminates shortly after separation, he or she would only receive \$100,000, while the spouse would receive \$300,000. If a termination method of valuation is used, the spouse

would receive 50% of the termination value—in this case, \$200,000—and the plan member would also receive \$200,000.

We use the commuted value basis when a member terminates membership and elects to transfer the value of the deferred pension or to pay a member's beneficiary estate the value of the member's accrued pension benefit in the event of the member's death before retirement. If the commuted value basis produces an appropriate value to be paid the member who terminates membership or dies, why would it not be an appropriate value for payment of the non-member spouse's interest?

At page 43 of the final report on the division of pensions on marriage breakdown, the Law Commission of Ontario stated: "On balance, the LCO believes that" the immediate settlement method "with a transfer based on commuted value is the most appropriate solution. We also note that the commuted value does not always produce a lower value than the hybrid method...." Further, at footnote 227, found at page 68 of the same report, the Law Commission of Ontario notes: "With one exception, pension division regimes in Canada that have adopted the ISM approach use commuted value."

Teachers' believes it is important to ensure that any pension-division regime enacted is cost-neutral to the plan; that is, the total of the payments made to the spouse and the plan member, in case of a relationship breakdown, should not exceed the amount the plan member is entitled to under the terms of the plan in cases of no relationship breakdown. In the hypothetical example above, the spouse received \$300,000 and the plan member terminated before retirement and only received \$100,000. Though some may argue the plan should top up the plan member, such a topping up would not be revenue-neutral to the plan and would bring the total of the spouse and the member's payments over the plan member's entitlement and would constitute an impermissible distribution under income tax rules. Likewise, the pension-division regime enacted should ensure that the plan does not experience gains arising from the division of pensions.

In conclusion, Teachers' is a strong advocate for a fair and simple approach to dividing pensions on marriage breakdown. That is why we welcome the introduction of the immediate settlement method for plan members who separate before retirement, we accept the new responsibilities the plan administrators will be assuming in calculating it at family law value, we urge the Legislature to amend the transition provisions, and we recommend the adoption of the termination method for the valuation of pensions.

We appreciate the opportunity to comment on Bill 133 and would be happy to answer any questions.

The Chair (Mr. Shafiq Qaadri): We have about two minutes per side, beginning with the government. Mr. Zimmer.

Mr. David Zimmer: Assuming that we go with the hybrid method of calculation, do you feel pension administrators are going to be comfortable and able to work through that prescribed method of valuation?

Mr. Ken Harrison: Yes, provided it is prescribed in the same level of detail as the commuted value basis is prescribed.

Mr. David Zimmer: So, what you need to carry out your duties, if it's going to be the hybrid method—you need a clearly prescribed method, and then you'll apply the necessary analysis to that prescribed method.

Mr. Ken Harrison: Yes.

Mr. David Zimmer: And you have no problem with that?

Mr. Ken Harrison: No.

The Chair (Mr. Shafiq Qaadri): Mrs. Elliott.

Mrs. Christine Elliott: Thank you for your presentation. You've indicated that any valuation method that's employed should not separate the ancillary benefits from the base value. I take it that you disagree with the actuaries with respect to their prescribed method. Is that so? It basically provides that the base amount be used as the transfer amount and that both of them be considered for the net family property calculation.

Mr. Ken Harrison: I'm not familiar with the actuaries' position on this.

Ms. Anne Slivinskas: Just to clarify, are you looking at a point made on page 4 of our submission?

Mrs. Christine Elliott: Yes, just before "Tax Issues Raised"

Ms. Anne Slivinskas: That statement is, "While Teachers' agrees with the valuation approach set out in subsection 67.2(2) ... we submit that any prescribed valuation method should not require that the value of ancillary benefits be itemized separately...."

What we were saying was, if we are required to provide the number, we can provide the number, but we would prefer that it not be set out separately. So it wouldn't be a statement that has on one column "base amount"; on the other column "ancillary amount." It would be best if it was a combined number.

Mrs. Christine Elliott: The actuaries, though, have indicated to us that the ancillary amount is something that you don't really know until you actually realize it. For example, when a person actually stops working, you don't know what benefits they would be entitled to, so any kind of calculation that takes place before that time is really just going to be an educated guess about what the amount should be and therefore leads to unfairness. Could you indicate how you could address that?

Ms. Anne Slivinskas: We hope that the regulations will provide an answer to the question of what date to assume retirement at. That is where a lot of the educated guesswork comes from. If the regulations provide an assumed retirement date and everybody calculates the hybrid retirement method valuation according to that regulation, there wouldn't be ambiguity.

The Chair (Mr. Shafiq Qaadri): Mr. Kormos.

Mr. Peter Kormos: Once again, there's a clear pattern developing here. I'm going to wait till the actuaries get up there and ask them why they think you don't agree with them, because I've already asked your

colleagues from HOOPP the corollary question. Thank you kindly.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Harrison and Ms. Slivinskas, for your deputation and written submission on behalf of the Ontario Teachers' Pension Plan.

LUKE'S PLACE

The Chair (Mr. Shafiq Qaadri): I advise members of the committee that we have one cancellation. Hopefully our next presenter, Ms. Barkwell, executive director of Luke's Place, is here.

Interjection.

The Chair (Mr. Shafiq Qaadri): Great. Please come forward. As you have seen the protocol, you have 20

minutes. I invite you to begin now.

Ms. Carol Barkwell: Good afternoon. I'm Carol Barkwell, executive director of Luke's Place. I have worked with adult and teen women abuse survivors and their children for more than 22 years in both shelter- and community-based service settings as a counsellor and advocate. My areas of interest and experience are program development, community collaboration, research and systemic response. I have participated in numerous violence-against-women stakeholder consultations on policy and law reform. My personal approach, and the approach of Luke's Place, to the work of advocating for and serving women and children is non-partisan.

Luke's Place supports abused women and their children throughout the family law process and provides them and the Durham community with specialized resources and information about family law and woman abuse. A charitable organization incorporated in December 2000, the organization is a unique resource centre that focuses exclusively on the legal issues surrounding divorce, separation and child custody for abused women and their children. Luke's Place was created as a result of extensive research and community consultation done in Durham region on the needs of abused women and their children during the family law process.

I'm here to speak in favour of Bill 133 and, in particular, to the amendments that address restraining orders and automatic reporting mechanisms that could reduce court appearances. I would like to take just a few moments to set the context within which I, on behalf of Luke's Place, offer this support.

Post-separation violence is a reality. Recent separation is a common factor in the domestic homicides of women by their male partners. It is present in more than 85% of the cases reviewed by the Ontario Domestic Violence Death Review Committee of the coroner. In their 2004 report, they stated, "In our review of cases in the past two years, separation and a prior history of domestic violence are significant risk factors for women and children facing death at the hands of the intimate partner."

"There is no family law case more complicated than a case in which the safety issues are present and the abuser uses the legal system to continue to harm and harass. These cases are both challenging and time-consuming."

Further, in 2005, the DVDRC states, "In identifying risk factors, two of the three top risk factors were 'an actual or pending separation' and 'a prior history of domestic violence."

Research conducted by Luke's Place, A Needs Assessment and Gap Analysis for Abused Women Unrepresented in the Family Law System, 2007, supports the annual findings of the DVDRC that violence and the threat of violence does not end for women upon separation: "Women who leave abusive men must continue to deal with their harassment, their intimidation and their violence in very real ways. Levels of physical violence, including the risk of lethality, often increase in the first six months after separation. More than half of the women who participated in our study reported that the abuse continued and even increased post-separation, and over 60% told us they were in fear for their lives while they were going through Family Court."

Family law proceedings are often initiated in this time frame, particularly by women seeking safety and security for themselves and their children: "Not surprisingly, the vast majority of women ... listed custody and access as the number one issue they were dealing with in Family Court, followed by child support and restraining orders.

"Joint custody was the most common custody outcome ... for the women in the study. Every one of these women reported ongoing harassment by the abuser related to child-related decisions and access arrangements."

1530

For many reasons, the criminal court is not an option or a choice for survivors of domestic violence. It is in the Family Court where most women seek restraining orders. We support Bill 133, which offers restraining order amendments that provide significant improvements in enforcement and accountability, as well as expanding access to them by greater categories of people in need. Additionally, we support the repeal of Ontario's Domestic Violence Protection Act, passed in 2000 and never implemented due in part to the number of concerns raised by many system stakeholders. The safety of abused women and their children can be better served through simpler approaches that target the area of greatest need for reform.

As advocates for abused women across the province have known for years, family law restraining orders are not an effective mechanism to keep women safe. Currently, orders are problematic for enforcement, particularly by police, and timely response is virtually non-existent. Consequences for those who violate them are often minimal. Currently, a breach of a Family Court restraining order is punishable under the Provincial Offences Act. Bill 133 breaches would be punishable through Criminal Code section 127, which states, "Every one who, without lawful excuse, disobeys a lawful order made by a court of justice ... is, unless a punishment or other mode of proceeding is expressly provided by law, guilty of

"(a) an indictable offence and liable to imprisonment for a term not exceeding two years...."

This change would provide for a person in breach of a restraining order to be arrested by police and charged with a criminal offence. With the potential of a holding for a criminal bail hearing and pre-trial custody, a woman can have the opportunity to become safe. As the case proceeds in the criminal court, more serious penalties and restrictions could be levied than are currently available, upon a finding of guilt. This process and outcome could serve as a potential deterrent to abusers.

Also of benefit is the maintenance of the standard of proof required. Under the Family Court "on a balance of probabilities," it is the applicant's "reasonable grounds to fear for her own safety or for the safety of any child ... in her lawful custody" that is established. This can prevent potential delays caused by the gathering of third-party

evidence in obtaining this protection.

The expansion of categories of people who can access restraining orders to include people who have lived together for any period of time increases accessibility of this protection, particularly to young women, who are statistically most at risk of being seriously injured or killed. Bill 133 also offers specific provisions that judges can include a restraining order, while providing a starting place that also allows judges to make any other provision that the court considers appropriate.

Further, provisions of Bill 133 could assist in addressing some concerns regarding use of Family Court proceedings by abusers to continue their harassment and control through legal bullying; specifically, those provisions that would limit inappropriate behaviour in situations where a woman may not fear for her physical safety: "The court may also make an interim order prohibiting, in whole or in part, a party from directly or indirectly contacting or communicating with another party, if the court determines that the order is necessary to ensure that an application is dealt with justly."

The provision in Bill 133 relating to child support that will make it mandatory for payers to provide updated financial information on an annual basis, and proposed amendments to pension information disclosure in the division of pension assets, offer the potential of a far less onerous process. This can assist women whose former partners are abusive to reduce the need for initiating more ongoing contact through the court process or, in the alternative, of not receiving the support increases or pension benefits to which they are entitled by staying out of the court.

Luke's Place strongly supports Bill 133 amendments requiring that evidence, including the results of a recent police check and child protection records check, and information about any current or previous Family Court proceedings, be provided where the person seeking custody is a non-parent. Further, we support that evidence is required in all custody cases, even where the parties are consenting to an order.

In summation, Luke's Place believes that Bill 133 offers important first steps in improving the emotional and physical safety of women abuse survivors and their children. On behalf of Luke's Place, I urge you to recommend this bill, as written, for third reading.

The Chair (Mr. Shafiq Qaadri): We have three minutes per side, beginning with Mrs. Elliott.

Mrs. Christine Elliott: I'm certainly aware, as a member from Durham region, of the great work you do in your agency, and I thank you for being here today and for your presentation.

The Chair (Mr. Shafiq Qaadri): Mr. Kormos.

Mr. Peter Kormos: Thank you as well. It's remarkable: Some of the language in your submission is identical to the language in the YWCA submission.

Ms. Carol Barkwell: Well, we are colleagues, and we do agree on many points.

Mr. Peter Kormos: As I say, it's just interesting.

The Chair (Mr. Shafiq Qaadri): The government side, Mr. Johnson.

Mr. Rick Johnson: Thank you for your presentation. I would be another Durham region representative, on the north side. You talk about Bill 133 offering important first steps. Could you expand on possible other steps?

Ms. Carol Barkwell: Well, probably not in this forum, but I certainly think that other steps we could go to from here would be some reform around court process and the legal bullying issues that arise often for women. I think it's important first steps, and that remains to be seen on the rollout—

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Barkwell, for your presence, deputation and written submission. I now move ahead to our next presenters, Mr. Dart, Ms. Slivinskas and Ms. Napier on behalf of the Ontario Bar Association.

Mr. Peter Kormos: On a point of order, Mr. Chair: We've received a written submission, this one on the 14-inch paper, that's offensive, vicious, mean and hateful. It appears to be written by a nutter. Do we have to accept it as part of the record?

Interjection.

Mr. Peter Kormos: A nutter.

The Chair (Mr. Shafiq Qaadri): Mr. Kormos, the question is very well taken. It's actually the will of the committee if we want to proceed to—

Mr. Peter Kormos: I seek unanimous consent not to receive and table this particular submission.

The Chair (Mr. Shafiq Qaadri): Mr. Kormos is seeking unanimous consent from the committee to unaccept, de-accept—agreed. Point well taken.

Now, do we have our next presenters, Mr. Dart, Ms. Slivinskas, Ms. Napier?

GOLDEN ACTUARIAL SERVICES

The Chair (Mr. Shafiq Qaadri): Do we have our subsequent presenter, Mr. Martin of Golden Actuarial Services? Your time is now, sir. Come forward. Thank you, Mr. Martin, for agreeing to go ahead earlier.

Interjection.

The Chair (Mr. Shafiq Qaadri): Just leave it with the clerk. We'll have it distributed. Please begin.

Mr. Peter Martin: First, thank you for inviting me to speak to the committee, and I note the order paper; I am an actuary and not a lawyer.

First of all, let me say that I applaud the settlement aspects of this bill, which were long overdue, and I have no problem with provisions of the bill dealing with the division of pensions already in pay. The issues concern, primarily, valuation of pensions that are not yet in pay, and there are two sub-parts of that: one is the inclusion of contingent benefits, and the second is that the current form of Bill 133 effectively denies recourse where the facts of the case are at variance with the net family law value.

I'm going to change my presentation slightly because of the previous remarks and start by pointing out two errors in previous presentations. The presentation made by HOOPP stated that if division occurred and included contingent benefits, this indeed might have to be subsidized by members of the plan as a whole. That is not correct. If, indeed, contingent benefits were included in the amount that had to be transferred out of a plan for the benefit of a spouse, then it would be the plan member who's married to the spouse who might have to subsidize that, not the members of the plan as a whole. I'd also point out that I think the position of actuaries is that the clients should not be required to transfer out any more than the value excluding these contingent benefits; commuted value is very closely related. So that was the first mistake I'd like to correct.

Then, in the presentation by Mr. Harrison, he quoted from page 43 of the law commission's report that the law commission had endorsed commuted value as the most appropriate solution for valuation. That is a misquote. On page 39, you will see that a section C begins, "Settlement: Defined Benefit Pension Not Yet in Pay," under which the line that he quoted falls. The law commission in fact recommended, and this is from page 5 of this report, that the value of contingent benefits actually be included in the value of pensions for the purpose of division between the spouses but that the plans not be required to pay out any more than the value without those contingent benefits being in there. In effect, the value of these contingent benefits, in my estimation, runs to perhaps 10% to 40% of a typical value that you now see in a marriage breakdown in Ontario, and the difference in value would have to come from other assets of the plan member, in the recommendations I think most actuaries have been making.

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Now, with that out of the way, I wanted to talk a little bit about these contingent benefits. The contingent benefits, as I said, are usually about 10% to 40% of the total value of the pension for purposes of the division of value on marriage breakdown. If these are excluded from the net family law value, then, in effect, we would be cutting the proportion of the pension value that would be going to the spouse in comparison with what is the norm in Ontario today. This is part of a wider concern that I have for Bill 133, as proposed, in that the process set out

for valuation and settlement, I believe, will lead to a spouse achieving for retirement purposes not just 10% to 40% less than what they might be led to expect, but I would estimate perhaps a full 50% less than what they should actually be receiving for purposes of retirement.

What are contingent benefits? These are, in effect, subsidies given to people to allow them to retire earlier than the normal retirement age; this is typically 65, but in the private sector in Ontario, the average retirement age is about 62, and in the public sector, it's about 58. These are things that a plan member typically does take advantage of; these are not exceptions. These are substantial benefits. As I said, they are worth approximately 10% to 40% of what is currently the norm in Ontario.

I'll say that the concerns that I've had with the inclusion of the contingent benefits and with respect to recourse, if the facts of the case are different from the assumptions of the net family law value, are essentially the same concerns that you've already heard voiced by each of the actuarial and pension valuators that you've heard. In fact, I would endorse the submission of Dilkes, Jeffery and refer you to it, and it is probably the most complete exposition of those two concerns about valuation and related issues.

My recommendations on how to treat the two concerns about valuation are essentially the same as what you have heard before, and I would again direct you to the Dilkes, Jeffery submission. In effect, what I'm recommending, and what most actuaries are recommending, is to implement the law commission's recommendations. Bill 133, on the other hand, has tried to implement the simplest, least demanding and most streamlined system, as opposed to what the law commission strictly recommended.

Now, the thing is, we actuaries do not include these contingent benefits, which are so much a dispute between the plans and ourselves, because we like doing it; we do it because the courts have mandated that they have to be in there. You need to understand something of the history and the treatment of the contingent benefits in Ontario: in the Family Law Act of 1986, "property" was defined as "any interest, present or future, vested or contingent, In real or personal property." However, approximately three lines down from where that was set out, the Family Law Act of 1986 attempted to exclude contingent benefits in 4.(1)(c): "in the case of a spouse's rights under a pension plan that have vested, the spouse's interest in the plan including...." In effect, they tried to leave them out. But in the intervening years, the courts have overruled this part of the Family Law Act, and it is now very well accepted that these are part of the value of the pension for the purposes of the division of value on marriage breakdown.

The law commission on page 5 of its report recommended that:

- "2. The Family Law Act be amended to indicate that unvested pension rights are also 'family property.'
- "3. The Family Law Act be amended to provide for use of the hybrid method in valuing rights under a defined benefit plan."

The LCO's recommendation number 3 embodies the value of the contingent benefits described in recommendation 2.

I believe that if Bill 133 is not amended as suggested above, then in all likelihood, the contingent benefits will be excluded and the amount allocated to a spouse in a typical case will fall by perhaps 40%. The reason is that the various parties have different expectations of how the bill will work—as you have well heard—as much of its substance will be determined by the as-yet-unknown regulations.

The family law bar believes:

—the same single number as what Bill 133 will value their clients' pensions at—the net family law value—will be available from the plans as a lump sum for transfer. This is entirely sensible, given what Bill 133 says.

—that the single number will include the value of contingent benefits, again, because that's what the law commission's recommendation said.

The Attorney General's office, at an Ontario Bar Association pension information seminar on Wednesday, March 4, announced that they intended to implement inclusion of contingent benefits and the hybrid method in the regulations.

The majority of major public sector pension plans appear to expect that the net family law value, which they would have to calculate and one half of which is the maximum that they would have to transfer as lump sums to spouses, will exclude contingent benefits and be the so-called "commuted value," or something very close to it—also called "termination value"—which they currently provide to members who terminate and want a lump sum paid to them rather than the eventual receipt of a pension. Their belief is reasonable, as the LCO recommended that the commuted value be the maximum value that they be required to transfer to a spouse. However, they are confusing the value for settlement purposes—the transfer to the spouse—with the value of the overall pension for division of value between the two parties.

The expectation of several knowledgeable actuaries is that the plans will strongly object to inclusion of contingent benefits and the net family law value, because it would require them to set up a new calculation procedure using the hybrid method—I think the large plans could probably manage this; the small plans may have more trouble, but they may actually still be able to do it—but particularly because it would require them to pay out substantially more than half the so-called "commuted value"—perhaps up to 40% more—and this may erode their solvency position. I won't get into the actual aspects of that.

At this point, I would like to read from a submission by the County and District Law Presidents' Association—they did not decide to appear here—and their remarks on pension division provisions:

"After much consideration, the LCO recommended the hybrid termination-retirement method as providing the fairest balance as between the competing interests of the parties. CDLPA endorses the LCO's recommendation and supports the use of the hybrid termination-retirement method within the valuation of such pensions for family law purposes.

"Secondly, CDLPA is concerned that the provision which provides that the pension administrator is to provide the 'preliminary value' of the pension member's interest potentially creates a conflict of interest as those values will be subsequently used to determine the lump sum to be transferred to the non-member spouse. Pension administrators may be pressured within their role as administrator to reduce the amount of pension paid out pursuant to these provisions, and may be tempted to use conservative assumptions when conducting the calculations."

And a following point, which is not directly related to this, but which I think is worthy of consideration, "Thirdly, CDLPA is concerned that the mechanism for the immediate transfer of a lump sum out of a pension plan is effective regardless of whether either or both of the parties have declared bankruptcy," is well worth noting.

In other provinces where a similar approach to division has been instituted, the final result has involved eliminating the contingent benefits from what the spouses receive and using commuted values alone. I suspect this happened partly because the magnitude of the overall 10% to 40% that contingent benefits provide was not appreciated, as well as to facilitate administrative convenience.

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To ensure that this will not occur in Ontario, I recommend that regardless of any other actions that the standing committee may undertake regarding Bill 133, that in accord with the views of the CDLPA, the views of, let's say, all valuators of pensions in Ontario pensions, the views of the Law Commission of Ontario and the consistent decisions of the judiciary over the last 20 years, that Bill 133 be amended to include the LCO's recommendations and the stated intention of the Attorney General's office to include contingent pension benefits valued using the hybrid method in the net family law value for the purposes of valuation, not necessarily for purposes of settlement or transfer from the plans.

I'll comment briefly on this broader issue of the erosion of pension values transferred to spouses. You'll see this on page 6 of my original submission. If you don't put in the contingent benefits, spouses will lose 10% to 40%. But if you then transfer out their lump sums, there's a problem in that most spouses are not good investors and if you put their sums into funds, they will be paying relatively high percentages or, MERs, for getting investment advice.

Then there's also the issue of annuitization, which I don't want to get into. I think there will be lots of questions coming. But basically, it means that unless you take very good care of your money, you'll run out of money, whereas if you leave the money in the plan, then you'll never run out of money. So I would urge that the committee also consider adopting measures to promote and

perhaps even compel the plans to offer the spouse the option of leaving their lump sum in the plan. But I am quite sympathetic to the plan's plight, and the plan must be consulted on this, because they have a new member who has to be looked after for many decades. I would hope that allowing the plans to charge a fee for this privilege—they're not currently allowed to charge a fee under Bill 133—might help to promote this.

I remark briefly on recourse, that where the facts are not in accord with the single retirement age assumptions, the Attorney General's office has announced that it will develop regulations to take into account contingent benefits embodying one age. This will ameliorate the retirement age issue, but I have thought about this, as have other pension valuators. Because of the complexity of pensions, even well-drafted regulations will not be able to cover a significant number of cases fact actually differs from the net family law value.

The key point I want to make is that if there's going to be recourse, then this requires multiple ages to appear on one of these reports, because without seeing alternatives and the relative magnitude of the impact, the parties will not understand the alternatives, and no recourse can be sought. There is actually an advantage in having only one value, because it makes it unnecessary for lawyers to become knowledgeable about pensions, as well as assisting the self-represented client. But there is a significant drawback in that practically, if you only see one value, you will not recognize that other possibilities exist, and in effect, there is no recourse.

So I would recommend option (b) proposed by Dilkes, Jeffery, on page 8 of their submission, where in addition to the regulated net family law value, there would be additional values in some prescribed way. The net family law value which would appear in reports would provide a safe harbour for lawyers, for the self-represented and perhaps even for judges as well. Also, there's a possibility there for pensions below a particular size. You might even omit these extra values.

One example of where these extra values are used now is where the circumstances of divorce change the financial circumstances of the plan member and their plans. Even though this is strictly, in law, a subsequent event that's disregarded, the parties renegotiate a different value based on such supplementary values.

So what I would actually recommend that the committee do is consult with the plans about the issue of whether they actually are prepared to pay out a value based on the hybrid method, which is going to be in excess of the commuted value, and if they are not, to modify Bill 133 so that—

The Chair (Mr. Shafiq Qaadri): You have about a minute left, Mr. Martin.

Mr. Peter Martin: —the value for valuation purposes will be different than the value for transfer purposes, the extra 10% to 40% coming from the pocket of the member and not from the plan. Thank you very much.

The Chair (Mr. Shafiq Qaadri): You have time for pleasantries—Mr. Kormos.

Mr. Peter Kormos: Thank you very much, sir. I know that the government members were listening carefully to your arguments. I look forward to actuaries continuing to challenge the government to justify why it's dumbing down—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos. The government side, Mr. Zimmer?

Mr. David Zimmer: Thank you very much. When I listen to these complicated submissions, I am reminded of the little ditty, "How much wood could a woodchuck chuck if a woodchuck could chuck wood?"

The Chair (Mr. Shafiq Qaadri): I thank you for those words of wisdom, Mr. Zimmer. Ms. Elliott?

Mrs. Christine Elliott: Thank you very much for your presentation. It really distils things into the fundamentals. Just in a nutshell, if I could say, if you don't add the value of the contingent benefits into the calculation, it's going to (a) result in some level of unfairness to the non-member spouse—

Mr. Peter Martin: According to the courts, yes.

Mrs. Christine Elliott: —okay—and also result in a breach of the Family Law Act, which requires the calculation of contingent benefits into net family property.

Mr. Peter Martin: The courts may overrule whatever modifications are made.

The Chair (Mr. Shafiq Qaadri): I'll need to intervene there. I thank you, Ms. Elliott, and Mr. Martin for coming forward, for your written deputation and as well for agreeing to go earlier than stated.

ONTARIO BAR ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I now invite our previous presenters, Mr. Dart, Ms. Slivinskas and Ms. Napier of the Ontario Bar Association to please take your places. You've seen the protocol, and I invite you to begin now.

Mr. Tom Dart: I'm going to begin. I'm Tom Dart. My job in this process is to simply explain to you what the family law parts of the bill are about. The pension experts are next to me, and they're going to address you with regard to the pension benefit sections of the legislation. I'm here—

Interjection.

Mr. Tom Dart: I will, in the sense that we have been working for a long time to get these changes. It's been an issue for family law lawyers and clients for many years, to be able to pay the equalization payment from the pension itself. We have been working hard for many years, trying to get these changes in place, so to us this is a very important piece of legislation in terms of the pension sections.

We are in general support of the other sections of the legislation. We have some concerns about the custody provisions of the legislation in terms of how that's going to work practically. We support the concept of having an application for custody contain the provisions that are in the bill. We think it's important to have that information in front of a judge. It's just going to be a little bit

difficult, in the practical sense, to always have to comply. It costs our clients money whenever we have to complete an application of any sort, so a lengthy affidavit—and I realize this is going to be part of the regulations, so perhaps it can be addressed at that stage. But the concern that we have is just simply not only what we have to do to get the application before the court properly and how much additional costs are going to impact our clients, but we also want to make sure that the information that's being obtained through police record checks etc. is going to be useful to the court. So there needs to be something to address the type of information that's coming forward. For example, if there's a criminal conviction for whatever, how does that impact the custody decision? Some criminal convictions may have an impact on a custody issue, obviously, and some may not. I suppose that'll work out to the court, but it would be helpful to have something in the legislation or the regulations indicating what needs to be produced.

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In other respects, in terms of the bill itself, we are in general support of the concepts and we're very grateful, in particular, to see that, finally, family law, after so many years, is being addressed in the legislation.

I'm going to turn it over to Anne now to speak to you about the pension provisions of the legislation.

Ms. Anne Slivinskas: Thank you, Tom. My name is Anne Slivinskas and I'm here before you now to make submissions as an executive member of the pension and benefits section. It's been a great honour to work with the lawyers in the family law bar, as well as with the Ministry of the Attorney General, as we grappled with the complex issues raised by the division of pensions on marriage breakdown.

The Ontario Bar Association supports the principles underlying the proposed amendments to the Pension Benefits Act and the Family Law Act, for they contemplate an equitable division of pension assets while reducing the costs and uncertainties that are associated with the division of pensions under the current system. There are, however, a number of provisions that need to be clarified, either by amendment to Bill 133 or in the accompanying regulations.

Very briefly, I will be addressing the following four points: (1) valuations; (2) restriction on transfer of disproportionate share; (3) transfer options; and (4) support.

Valuation of the pension: Bill 133 provides that the net family law value of the member's interest in a pension plan is determined in accordance with section 67.2 of the Pension Benefits Act. We note that this new section does not contemplate the valuation of a spouse's interest in a vested spousal survivor pension in cases where the valuation date occurs after first instalment due; that is, the couple separated after the plan member retired and on that retirement date, if the spouses are not living separately and apart and haven't waived the benefit, spouses get a lifetime survivor benefit. This is family property as well, and it needs to be valued and included in the calculation of net family property. An amendment

must be made to Bill 133 itself; this can't be addressed in the regulations. That's our first recommendation.

The second point on valuation: Although Bill 133 doesn't expressly state how the net family value will be calculated, we understand that such a method will be prescribed in the regulations. The family law bar accepts that the new scheme will create values for pensions which will, in some cases, be more advantageous to the member spouse and, in some cases, more advantageous to the non-member spouse, depending on how the assumptions that are made realize in the course of time in each individual fact situation.

There still is a concern, however, that there may be a minority of cases in which the calculation of net family law value works such hardship that there should be some residual discretion on the part of a judge hearing a family law matter to either adjust the net family law value or the equalization payment, in the interest of fairness. Such an exception should be fairly narrowly defined and should entail little, if any, administrative burden on the part of the plan administrator. It should be no more difficult than, for example, a triggering of the exceptions contained in the child support guidelines. The child support guideline rules are largely rigidly applied but do contain some flexibility, such as in cases of undue hardship.

My second submission is on the restriction on transfer of a disproportionate share. Subsection 10.1(4) of the Family Law Act restricts the amount that can be transferred as a lump sum from the plan member's pension plan in satisfaction of an equalization obligation. The Ontario Bar Association notes that the formula in this section does not work when the pensions holder has debt or pre-marriage assets, because the definition for "C" in the formula does not take these debts and assets into account. For this and other reasons detailed in our written submissions, the OBA recommends that the formula be removed.

Third: transfer options. The OBA has two recommendations on the transfer options, the first recommendation being that the menu of transfer options offered in subsection 67.3(2) should be expanded to include transfers to a spouse's estate in the event that the spouse dies before the transfer is completed. The situation we have in mind is that the parties separate, the parties value their pension; the spouse applies for the transfer, but before the transfer is completed, the spouse dies. The Income Tax Act would prohibit plan administrators from completing the transfer, say, to the spouse's RSP. That's why we would need an additional option to transfer to the spouse's estate.

The second point on transfer options: Subsection 67.3(2) contemplates implementation of the transfer by leaving the money in the plan to the credit of an eligible spouse in such circumstances as may be prescribed. We recommend that the regulations clearly outline the spouse's rights under the pension plan and the corresponding obligations of the plan administrator if this transfer option is chosen.

My fourth point is on support. While the pension property is considered family property, it's also con-

sidered an income stream and may be subject to support deductions. Proposed subsection 67.3(10) of the Pension Benefits Act clearly states that the transfer of a spouse's share of the pension benefit in a lump sum in satisfaction of the plan member's equalization obligation does not affect the spouse's claim for support. This means that the portion of the member's pension that remains in the pension plan can be subject to support deduction. We note that there is no parallel provision in proposed section 67.4 of the Pension Benefits Act, which deals with the division of pensions in pay. The absence of such a parallel provision may be interpreted as an attempt by the Legislature to stop the stacking of equalization and support orders which can result in the payment of 100% of the member's pension benefits to the spouse—half as equalization and then half as support. The Ontario Bar Association wishes to clarify whether the member's remaining pension payments can be assigned or seized

Subsection 67.4(5) of the Pension Benefits Act limits the spouse's share of the pension to 50% of the net family law value of the pension. There has always been a 50% limit on the amount that can be assigned for equalization. The family law bar believes that there should be no such limitation, or that if one is retained, that there be a power reserved to a court to override it in deserving circumstances. In a meritorious case, a court should be able to award 100% of a spouse's pension to a former spouse, regardless of whether the basis for that is in property, support, or a combination of the two. We acknowledge that in such cases, the amount paid to the spouse can't exceed 100% of the commuted value of the pension, as distinct from 100% of the net family law value, which you have heard can exceed 100% of the commuted value, depending on the valuation method that's used.

I'm going to sneak in one additional point. Finally, the Ontario Bar Association urges the Legislature to establish a retirement fund into which non-member spouses may deposit the transferred amount. This is the 10th recommendation that was made by the law commission. The Expert Commission on Pensions also recommended the establishment of an Ontario pension agency to receive, pool, administer, invest and disperse stranded pensions in an efficient manner. This is one recommendation that I believe everyone can support, and I think it provides a response to Mr. Martin's concerns that an unsophisticated spouse would be unable to sufficiently manage and invest the lump sum.

Those are all my submissions. I welcome your questions.

The Chair (Mr. Shafiq Qaadri): We have about three minutes per side, beginning with the government.

Mr. David Zimmer: I want to thank you, on behalf of the Attorney General and the government, for the great work the OBA has done with us in moving this along. We look forward to working with you on the matters that remain to be attended to—regulations and the like. Thank you very much for all the time that your members have put into this.

The Chair (Mr. Shafiq Qaadri): Mrs. Elliott.

Mrs. Christine Elliott: I'd also like to thank you for your excellent and substantial presentation on this issue. It's apparent to me that the members of the bar association have spent a significant amount of time on this. Your consideration of the issues that you've raised—recognizing the need for some clarity in terms of pensions in family breakdowns. I would urge the government members to take this into consideration, because these are not inconsiderable recommendations that you're making. It would seem to me that we should have consulted more widely with you before we got this material before us in the first place. But there certainly is time, and I would urge the government members to take it into consideration in their deliberations. We certainly will.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Elliott. Mr. Kormos?

Mr. Peter Kormos: Needless to say, for New Democrats, the proposal of a provincial pension agency which would not only deal with the situation you described, but also accommodate small businesspeople, small employers with one or two employees and people in non-traditional work, creates real opportunities.

Two interesting things: One was page 5 of your submission and your comments here. Your observation is that there are going to be some losers and there could be some winners from time to time. Is that not bothersome? Is there not a process where we can sort of broaden the peak of the bell curve so that there are more people who come out just right? I suppose it's like Goldilocks and the Three Bears and the porridge; right? That causes me concern, obviously.

Ms. Anne Slivinskas: If a decision is made to classify pensions as property, that challenge will always be faced because pensions are unlike other properties in that they are a stream of future payments. You have to do, as the Supreme Court of Canada noted, some educated guesswork to determine exactly what amount is required at the present time to recreate that future value. So there will always be some guesswork. Unless you take a pension out of property, just take it out of the regime altogether, and everybody divides it at the time that it's paid, that's the only time you will get it right 100% of the time.

Mr. Peter Kormos: Okay. When you talk about overriding the 50% rule—I want to make sure I understand—you're not talking about some fault-based justification for that.

Ms. Anne Slivinskas: I'll let Wendy Napier speak to that point.

Ms. Wendy Napier: We don't mean so much fault, although there can be merits to an argument that one should have access to 100% of a pension. For one thing, the party should have the ability to decide that perhaps all of a pension can go to one spouse—

Mr. Peter Kormos: Okay. You're arguing that the statutory protection of at least 50% of the pension for the

named pensioner should be capable of override, if it's in the interests of—

Ms. Wendy Napier: That's right, because it limits the flexibility of the options open to the parties as to how to deal with their issues. But there's a secondary consideration, and that is where you have somebody who has absconded from a jurisdiction and they've taken all their assets, and the only thing left in Ontario is the one pension. We want to be sure that in a meritorious case, the spouse can actually get that pension asset transferred, because they don't have the ability to realize their claims—

Mr. Peter Kormos: And the policy for the 50% rationale is the same policy that we have around pensions in general, that we don't want to destroy somebody's means of income in their—

The Chair (Mr. Shafiq Qaadri): I'll need to intervene there. Thank you, Mr. Kormos. Thank you, Mr. Dart, Ms. Slivinskas and Ms. Napier, for your deputation and written submission on behalf of the Ontario Bar Association.

OMERS ADMINISTRATION CORP.

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter, Mr. Gibbins of the OMERS Administration Corp., corporate counsel. You've seen the protocol. You have 20 minutes in which to make your submission, beginning now.

Mr. Gareth Gibbins: Good afternoon. My name is Gareth Gibbins and I'm the corporate counsel in the pension group at the OMERS Administration Corp. I'd like to start off by thanking you for the opportunity to speak to you today about the provisions in Bill 133 pertaining to the divisions of pensions on marriage breakdown.

I'd like to start with a little bit of history about what OMERS is. The Ontario municipal employees retirement system was established in 1962 as a pension plan for employees of local governments in Ontario. On June 30, 2006, the Ontario Municipal Employees Retirement System Act, 2006, was proclaimed into force, and the OMERS registered pension plans now consist of the OMERS primary pension plan and the OMERS supplemental pension plan for police, firefighters and paramedics. Today, the primary plan provides pension benefits for approximately 390,000 current and former employees of more than 900 participating employers. Under the OMERS Act, 2006, the former OMERS board was continued as the OMERS Administration Corp., and this is the perspective I will be speaking from today.

I would like to start by congratulating the government for its efforts to reform the division of pensions on marriage breakdown. OMERS supports a statutory scheme that permits pensions to be divided with finality and certainty at the time of the relationship breakdown, and OMERS believes that the changes proposed in Bill 133 set the framework for accomplishing this objective. Such changes are necessary to ensure certainty and predictability of results and also ensure that the parties'

intentions are carried out without the increased administrative, legal and litigation costs associated with the current "if and when" regime and ambiguously or poorly drafted domestic contracts and court orders. OMERS has also made a written submission on Bill 133, and today I will be focusing on four observations that are addressed in that submission.

First, turning to the valuation for family law purposes, OMERS supports the requirement in Bill 133 for the administrator to calculate the net family law value in accordance with the prescribed valuation method. Generally speaking, OMERS prefers a prescribed valuation method that is based on the commuted value of the pension in question, calculated in accordance with the existing provisions for calculating a termination value in the PBA and the regulations. This would allow administrators to value pensions using their existing calculators and systems. That being said, to the extent that the adjustments in the new subsection 67.2(2) of the PBA are added to the preliminary value in new subsection 67.2(1) of the PBA, the details for how that preliminary value should be calculated and the adjustments thereto should be clearly prescribed in the regulations.

Turning to the transition provisions in the bill, new subsection 67.2(9) of the PBA provides that an application for a statement of net family law value cannot be made if the order or domestic contract was filed with the administrator before that section comes into force. Similarly, new subsection 67.5(1) of the PBA provides that an order, a family arbitration award or a domestic contract that is filed with the administrator after the date on which that section comes into force is not effective to the extent that it requires the administrator to divide the pension otherwise than permitted by new section 67.3 or 67.4. Similarly and finally, new subsection 67.6(1) of the PBA provides that new section 67.6 applies if the order or domestic contract is filed with the administrator before the date on which that section into force.

In all three of the transition provisions I mentioned, the date the order or domestic contract is filed with the administrator is used to determine whether the new or the old regime applies. OMERS believes that a more appropriate transition date would be the date the order is made or the date the agreement is executed. This would allow the parties to honour the terms of an order or domestic contract entered into before the applicable provisions of Bill 133 come into force. Furthermore, a transition date based on when an order was made or an agreement entered into would also provide a bright-line test to determine whether the new regime applies. This would, to give an example, avoid disputes over when an order or domestic contract was "filed" with the administrator.

Third, in terms of adjusting or revaluing the pension, and I offer this more by way of a general comment, new subsection 67.3(7) of the PBA requires administrators to adjust benefits and entitlements of the member in accordance with the regulations to take into account the transfer of a lump sum for family law purposes. New subsection 67.4(4) of the PBA, once the application for

the division of a pension is complete, requires the administrator to revalue the member's pension in the prescribed manner. Similar revaluing takes place under subsection 67.6(5). My comment here is simply that the method for adjusting benefits and revaluing pensions should be clearly set out in the regulations. This is particularly important if the termination method is not used for calculating the net family law value.

Finally, I just wanted to briefly touch on the eligibility criteria to apply for a transfer under subsection 67.3(1) and for the division of a pension under subsection 67.4(1). An administrator will not be in a position to confirm that some of the conditions in these provisions have been met. For example, an administrator will not know whether there is a reasonable prospect that the spouses will resume cohabitation. Accordingly, OMERS recommends that these provisions be amended to clarify that the administrator is not responsible for ensuring that the specified conditions exist. Instead, OMERS recommends that prescribed forms be developed for the member or non-member spouse to apply to the administrator for a transfer or division of the pension.

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In closing, OMERS believes that the amendments to the PBA and the Family Law Act proposed by Bill 133 will help bring much-needed clarity to the division of pensions on marriage breakdown. The immediate settlement method will permit pensions to be divided with finality and certainty. Furthermore, the new valuation method using the net family law value will help to simplify the pension division process for all parties.

The minor amendments proposed by OMERS in its written submission will help clarify when the new regime applies, who is eligible to apply for a statement, and when the applicable eligibility criteria have been met. OMERS looks forward to the passage of an amended Bill 133 and the opportunity to provide feedback on the regulations pertaining to the division of pensions on marriage breakdown.

Thank you for your time today.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Gibbins. We have about four minutes or so per side, beginning with Ms. Elliott.

Mrs. Christine Elliott: Thank you very much for your presentation, Mr. Gibbins. You may have heard Mr. Martin's presentation earlier, where he indicated that the value of the pension can be undervalued, as far as the non-member spouse is concerned, by 10% to 40% if you don't include those extra contingent values, yet the method that you're proposing seems to be that that can just be sort of dealt with as an adjustment somewhere down the line in the regulations. Are you a little bit concerned that this is something of greater importance that you may need to turn greater attention to if it can be undervalued by an amount that significant?

Mr. Gareth Gibbins: I haven't seen an actual calculation to show the example, and I'm also not an actuary myself, but just as a more general comment, and I understand that there are arguments on both sides, an example I hear from time to time is that you don't take into account the increased value of a painting that may go to one spouse or another after the applicable separation date. So that's one analogy you can draw. I also point out that no one disputes that the commuted value of a pension is appropriate when a member terminates employment as well.

Mrs. Christine Elliott: Just one other comment. It seems that the arguments in favour of the more simplified method, not taking into account the contingent benefits straight away, are the sort of ease of efficiency and greater certainty, but then on the other side you have to balance that with an unfairness aspect that might arise more frequently than one might consider. Surely that would be a more important consideration, to get it right rather than to calculate it easily. I'm just concerned about the discrepancy between the two systems.

Mr. Gareth Gibbins: And I understand the concern. I guess my point is, I see that more as a policy question of how it's going to be planned. As we heard in some of the other comments, to value the pension in almost all circumstances is going to require some sort of guesswork and some sort of—I hesitate to use the word "trade-off," because I don't think that's quite appropriate, but some sort of guesswork in assigning a probability for future events. In terms of which side of the spectrum, where you go, I think that's more of a policy question.

Mrs. Christine Elliott: Thank you.

The Chair (Mr. Shafiq Qaadri): Mr. Kormos.

Mr. Peter Kormos: Sorry. I had to step out, but I did read most of your submission. Of course, when I got to the conclusion, I went, "Eureka!" Well, really it wasn't a "eureka" moment, because it's part of the pattern we're seeing here.

This whole thing about guesswork: The actuaries have been calling that "assumptions," and they say that they make those assumptions subjectively; they don't just draw them out of thin air, because each family scenario is different—different ages, the spouses could be closer in age range, there could be huge disparities, all sorts of types of occupation. So the actuaries argue, and I hope I'm putting this correctly, that it's less guesswork than it is a science—that's elements of artistry, where that could be said of any profession. You don't discount that, though, do you, the role that actuaries play in customizing their analysis to the family scenario? They would argue that they are customizing it, right? Is that a fair way to put it?

Mr. Gareth Gibbins: Sorry. I'm not sure exactly what the question is.

Mr. Peter Kormos: Well, you say it's guesswork. The actuaries say it's assumptions, and they are assumptions based on experience, on research, the various stuff that's been written over the course of years, academic stuff. They say they can tailor a number that fits that family instead of assuming that one size fits all and then living with the winners and losers and perhaps a bell curve that's really very narrow in terms of where it comes out just right. What's wrong with that approach?

Mr. Gareth Gibbins: I'm not sure anything's wrong with that approach per se. I would just like to say, my father is an actuary, so I have a lot of respect for actuaries.

Mr. Peter Kormos: I understand your hesitation.

Mr. Gareth Gibbins: But I think maybe the underlying comment is, are there still, whatever you want to call them—and I certainly didn't mean to misuse words. But are there are still assumptions that are based on future events?

Mr. Peter Kormos: Okay. Thanks kindly.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos. To the government side.

Mr. David Zimmer: Let's assume that we have the hybrid method of valuation. My question, and I asked this earlier in the afternoon: Assuming that the hybrid valuation methods are clearly prescribed, are the administrators going to be able and comfortable applying the prescribed method?

Mr. Gareth Gibbins: Yes. As I stated, OMERS' preference is for the termination method, but if a hybrid method was clearly prescribed and the administrators were provided with an appropriate lead time to implement the necessary systems, yes, we could do it, and we would see that as an improvement over the current "if and when" approach.

Mr. David Zimmer: So what you need is a clear set of rules or a clear set of prescriptions to carry out your task.

This is a more delicate question. Do you think that the valuators might have an almost subconscious sense, when they're working through the prescribed calculations, that, if possible, they can err in favour of the member?

Mr. Gareth Gibbins: No. We have our fiduciary duties and our obligations to follow what is set out in the regulations. It's my understanding—and again I note I'm not an actuary, but if all the requirements are clearly set out in the regulations, then two different actuaries, whether that's a plan's actuary or an independent actuary, should come to essentially the same number based on those prescribed requirements.

Mr. David Zimmer: So you just bring your skill set and your professional standards of practice and do the calculation as prescribed?

Mr. Gareth Gibbins: Yes.

Mr. David Zimmer: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Gibbins, for your deputation on behalf of OMERS.

JASON HOWIE

The Chair (Mr. Shafiq Qaadri): I now invite our final presenter of the day, who will be presenting to us in his capacity as a private individual, which means that he will have 15 minutes in which to do the combined presentation. Welcome, Mr. Howie, and I invite you to begin now.

Mr. Jason Howie: In my capacity as a private individual, I'm a family law lawyer, and I think it's very important, before this committee considers any amendment to the Family Law Act, that this committee hear an opinion at least as to what impact this bill will have at ground level with the people—mainly people like me—who are faced with dealing with this legislation.

The first comment I would like to make is this: The history of family law is individual justice. Nobody comes to court or goes to a lawyer for the purposes of getting the national average of RRSPs, the average support. It is a case-by-case determination based on the activities and the savings and the income of that particular family. My concern is that the individuality is lost very subtly but very fundamentally in the amendments to the Family Law Act that are suggested.

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I should also say this: I practise in southwestern Ontario. I am a family law specialist. I've been practising for 20 years—I only look young. I've been a specialist since 2002, and I have consulted with just about every other family law lawyer who would listen to me on this particular subject. I assure you that what I'm providing you today is a consensus.

Let me deal first with the current regime. There have been some misconceptions about what happens in family law. When parties separate, they hire a lawyer. When they hire a lawyer, they have to produce a statement of assets, amongst other things. Included in that is to figure out how much this pension is worth. With all due respect, it is not an expensive, elaborate, complex process. It consists of somebody coming to my office with their pension statement, and me requesting a report for \$500. For \$500 that client has an individual report determining the value of their pension plan as at the date of separation.

I note that the act prescribes that the plan will now provide the value at a cost. Other provinces, I understand, charge \$250 or \$300. So my question is, if the plans are going to charge \$250 or \$300 to give you the report, does it make any sense, for the sake of saving \$200, to lose the individuality which exists in family law settlements? That is, in my view, and with all due respect, false economy.

The pension plan person comes in. We get a list of all the assets. We get a list of all the debts. Lately, the list of the debts is sometimes bigger than the list of the assets, but that's the way it is. We get it all together. We present it to the other side.

Under our current system, the pension valuation is routinely obtained within 72 hours at a cost of \$500. It has been a minimum—a minimum—of 15 years since we've had duelling actuaries disagreeing about this, that or the other thing. I consulted my colleagues, and they don't recall a single case in the last 10 or 15 years in which they have ever been required to call an actuary to court. We rely on the \$500 report.

By the way, the actuaries have come to the table—and many years ago, they came up with standards for their report. It is very typical, if both spouses have pensions, that we use the same actuary.

So if all of this is good, what's the real problem? The problem is this: The spouse comes to me, or anybody, and says, "I've got a pension." Seventy-two hours later, we get the report, and we say, "Mr. Jones, the value of your pension is \$350,000. All things being equal, can you please cut me a cheque for \$175,000 payable to your spouse?" Of course, people don't have the ready capital to make that payment. So the problem is not determining the value of the pension; the problem is figuring out how to fund the settlement. In the materials that you've received and from Hansard, people call this "settlement." I call it "funding." It's great that somebody's pension is worth \$300,000. Where are they supposed to get the \$150,000 to pay? They can't borrow against it. They can't do anything. So what has happened to date is that the pension plan holder is stripped of all of their other assets, or takes over a disproportionate amount of the debt, or goes to the bank and borrows a lot of money in order to fund the pension settlement.

I give the government full grades for coming up with an amendment to the Family Law Act which takes that funding problem out. That is doing a service to the public that, frankly, is immeasurable.

But this is the problem: In my view, the plan administrators have no role in the valuation of the pension. The plan administrators have no interest in what somebody's net family property statement is, how much their Visa cards are, how much their line of credit is. Their interest is to serve their members the best way they can and to allow, if you pass the legislation, an orderly transfer to the non-pensioned spouse. I have heard in questions—and I'm just wondering if everybody realizes what this means.

If you would do me the privilege, could you turn to page 3 of the summary that was just handed out? This is the problem. You ask the plan administrators to value the pension, but what does that mean? Under current law, the square that's called "Early Retirement," the basic vested pension and the indexation are all part of the pension that's valued. To use the word "pension" is a misnomer. It's a basket of contractual privileges when you stop working. If the legislation or the regulations say that, "For family law purposes, we will only consider the termination approach," which was urged on you by, I believe, the member of HOOPP and, I believe, OMERS, what that really means is that you have created two classes of non-shareable property. That spouse has a basket with three things in it. By legislation, you will be determining that the spouse only has access to one. That turns back the law to 1978, because it was in 1978 that the Ontario Family Law Reform Act created this concept of family assets and non-family assets. Twenty-three years ago, we got rid of that concept. We said, "That's unfair; an asset is an asset."

This legislation, if you allow pensions to be valued on a termination basis, will turn the clock back to 1978 and allow the pension holder to retain non-shareable property. That, in my respectful view, is a step backward. I looked different in 1979; I'm sure everybody looked and thought a little differently in 1979. Why can't you just

ask the pension plan administrator with—somebody said 200,000 or 300,000 members? That's an astronomical number. I thought 50,000 lawyers was bad enough in Ontario. That's chump change. Why can't we just have the plan administrator calculate all this for us? It's really unfair just to consider the basic, "This is what you get at 65," so just do the whole thing and make it fair. What's wrong with that? The problem with that is this: There is only one issue in pension cases in Ontario: When is the pension holder going to retire? Basic family law: The earlier you retire, the more pension you collect and the pension's worth more. Is that clear?

But what are you going to tell the administrator in your regulations or your legislation? You have to determine the date of retirement. You just pick age 58 because the average teacher retires—actually, the average teacher retires at 57, so you just take 57. That means that a pension plan holder who cannot possibly retire at age 65 has to overcompensate their spouse. Then you say, "We'll pick a later date. Let's say 62. Pension plan administrators, you value these things; you do it all the time. Assume age 62." What happens if the plan member, through his or her own hard work during the course of the marriage, takes early retirement? They get to keep that

My concern about Bill 133 relates back to the preamble of the Family Law Act. The preamble of the Family Law Act says this: "Whereas it is desirable to encourage and strengthen the role of the family; and whereas for that purpose it is necessary to recognize"—and this is a key—"the equal position of spouses as individuals within marriage and to recognize"—the other key—"marriage as a form of partnership"—partnership. How does this legislation sit equally with individuals in marriages being partners? The truth is, if it's accurate, it's by luck.

There are other circumstances that the pension plan administrators cannot reasonably be asked to consider. What about mortality? I don't mean to be morbid, but what happens if I have a client in front of me at the office who is terminal and they're absolutely going to pass away within 12 months? I have to tell that person that they have to share their assets based on the assumption that they're going to retire in seven years and live to age 80. How does that make sense?

How about income tax? What income tax rate should be subtracted from the value of the pension? If somebody retires and the only thing they have is their pension, they're going to have less income tax than somebody who retires rich. How is that fair to the pension plan holder? How is that fair to the spouse?

Perhaps the most common one that we're hearing these days—and I realize it might not be a problem. I'm confident it's not a problem for the major public plans—I don't want to start any rumours—but what about solvency?

The Chair (Mr. Shafiq Qaadri): You've got about a minute left, Mr. Howie.

Mr. Jason Howie: Thank you, sir.

What happens if the plan is not solvent? These regulations will dictate to a member that they have to pay capital based on the assumption that the plan is solvent.

In closing, I give the government full marks for giving family law lawyers and the public the tools to settle their cases, to create the ability to reach out to the wealth that's needed. I caution, in the strongest possible language, arbitrary numbers which will simply bring family law into disrepute.

The Chair (Mr. Shafiq Qaadri): Thank you very much, Mr. Howie, for your presentation and written deputation.

If there's no further business before the committee, I remind us that the administrative deadline for filing amendments is Thursday, April 2, at 12 noon.

Is there any further business before this committee? Committee adjourned.

The committee adjourned at 1640.

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Mr. Peter Kormos (Welland ND)

Mr. David Zimmer (Willowdale L)

Also taking part / Autres participants et participantes

Mr. Dave Levac (Brant L)

Clerk / Greffier

Mr. Katch Koch

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Legislative Assembly of Ontario

First Session, 39th Parliament

Official Report of Debates (Hansard)

Monday 6 April 2009

Standing Committee on Social Policy

Family Statute Law Amendment Act, 2009

Assemblée législative de l'Ontario

Première session, 39^e législature

Journal des débats (Hansard)

Lundi 6 avril 2009

Comité permanent de la politique sociale

Loi de 2009 modifiant des lois en ce qui concerne le droit de la famille



Président : Shafiq Qaadri Greffier : Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Monday 6 April 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Lundi 6 avril 2009

The committee met at 1405 in committee room 1.

FAMILY STATUTE LAW AMENDMENT ACT, 2009 LOI DE 2009 MODIFIANT DES LOIS EN CE QUI CONCERNE LE DROIT DE LA FAMILLE

Consideration of Bill 133, An Act to amend various Acts in relation to certain family law matters and to repeal the Domestic Violence Protection Act, 2000 / Projet de loi 133, Loi modifiant diverses lois en ce qui concerne des questions de droit de la famille et abrogeant la Loi de 2000 sur la protection contre la violence familiale.

The Vice-Chair (Mr. Vic Dhillon): Good afternoon, committee members and guests. We're here today to discuss the clause-by-clause consideration of Bill 133, An Act to amend various Acts in relation to certain family law matters and to repeal the Domestic Violence Protection Act, 2000.

First of all, are there any comments before we start? Mrs. Elliott?

Mrs. Christine Elliott: I would like to make a few general comments before we start with specific amendments. When this issue went through second reading in the Legislature, I did have some concerns about it that I expressed at that time, but I was prepared to support it in principle because of the fact of its dealing with some significant issues that are outstanding in family law, including child custody applications, domestic violence and pension splitting. But regrettably, the flaws in Bill 133 became apparent as soon as the various presenters came before us in committee. I did want to make just a few comments about that.

First, with respect to child custody and protection matters, we heard from numerous presenters that the amendments to the Children's Law Reform Act that were proposed by Bill 133 are unworkable, place judges in an untenable position and may in fact work against the child's best interests in some cases. We heard from a number of experts on this issue, including from individual family law practitioners, the Family Lawyers Association and, most notably, a letter that was written to the committee by 12 family court judges. This is quite remarkable in itself. I've never heard of this happening in committee before, where the judges have actually been in

touch directly with the committee. But they did raise some serious concerns, and I would just like to read a couple of their comments on the record.

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"Unfortunately, in our view, the legislation in its current form will have significant and unintended negative consequences for the administration of justice in our courts.

"We wish to specifically address clauses 6 to 10 of the bill, the clauses relating to custody applications in our courts. In our view, these sections will be difficult, expensive and burdensome to implement, if they can be implemented at all. If they are implemented, we believe custody applications will become so complicated that many applications will be delayed, deferred or withdrawn. Applying for a custody order in a family court will be more onerous, and the process of adjudicating family law cases will be more cumbersome. Our greatest concern is that, in the end, the family law process will be less accessible to the people of this province. In our view, such an outcome, while not intended, will be contrary to the best interests of the children involved in custody applications."

It goes on to discuss some of the specific concerns that they have. They basically recommended—both the Family Lawyers Association and the Family Court justices—that the fitness of an applicant for a custody application be reviewed by the Office of the Children's Lawyer. This is something that I believe is going to be a more elegant and cost-effective solution, that will certainly ensure that children are kept safely and custody applications are only granted in the children's best interests.

The other point, just in this context, that I would like to raise is that one wonders who was consulted in the course of drafting Bill 133, if the family law lawyers, almost to a person, who presented indicated that they were concerned and this concern was also expressed by the judges.

With respect to our preferred choices and the amendments that we've put forward, we would prefer to see the Office of the Children's Lawyer be prepared to do the investigations in this process and present a report to the judge. The additional amendments that we have proffered really relate to a second alternative, which is to deal with what we have and try and make that stronger. Certainly, the preferred course would be to have the Office of the Children's Lawyer involved.

With respect to the issue of domestic violence, I certainly do commend the government and the committee for taking on the issue of criminalizing the breach of restraining orders. This is certainly commendable and something that is needed in order to prevent people being involved in domestic violence, predominantly women and children. However, the one thing I wasn't really able to understand in committee and I didn't really get a cogent reason from any of the witnesses about was why it was also necessary to repeal the Domestic Violence Protection Act. To my mind, they're complementary provisions and certainly not mutually exclusive. So I would certainly advocate retaining the Domestic Violence Protection Act in addition to the other changes that are being made.

With respect to the issue of pension splitting, we certainly heard a wide divergence in opinion between the actuaries who presented and the pension administrators. There really seems to be a concern about fairness for the non-pension-holding spouse and the concern that one shouldn't just use the one pension valuation when determining net family property for equalization purposes. The suggestion was made by the actuaries—and in fact was a recommendation by the Law Commission of Ontario—that two pension values be used: one for the vested amount which would be included as the transfer amount; the second one being the non-vested or contingent value, which would be used for the calculation of net family property for equalization purposes. So again, I would certainly suggest that would be an amendment that we should well consider doing to make sure that the nonpension-holding spouse is fairly dealt with in the equalization process.

So those are the types of amendments that we would prefer to see in this legislation. With that, I will conclude.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Elliott. Before we move to consideration of clauses, the floor is still open for any general comments. Mr. Kormos?

Mr. Peter Kormos: Thank you, Chair. I just want to outline where our concerns are. I don't expect that this matter will take a whole lot of time this afternoon. I spoke with Mr. Zimmer earlier, and with Mrs. Elliott.

First of all, I do want to thank the people who came to the committee to make presentations. By and large, they were extremely helpful. I was disappointed in a couple. One was the YWCA of Toronto, Amanda Dale and Pamela Cross. They seemed to be leading the charge to defend, however belatedly, the repeal of the Domestic Violence Protection Act. Part of their submission said, "We urge the committee to set aside partisan point-scoring to hear what we have to say from our considerable expertise in the area." I say that this committee has conducted itself around Bill 133 in a very non-partisan way. We've all had a common interest in addressing all of the issues in the bill.

They go on to suggest that somehow, while women's advocates initially supported this legislation—that is, the Domestic Violence Protection Act—"it quickly became

apparent, as the regulations were being developed, that it was essentially unworkable and not helpful to women." Well, this is the first time I've heard of that, the first time anybody's heard of it. Quite frankly, it smacks of something that's been concocted in an effort to justify the repeal of Bill 133.

I recall, as an opposition member, being critical of the Domestic Violence Protection Act in terms of what was going to be needed to make it work: amongst other things, a whole new slew of JPs, especially JPs who were specially trained in areas of domestic violence. Everybody acknowledged that at the time. It was even more disturbing when I heard Carol Barkwell from Luke's Place parrot some of the very same language. It's a good thing plagiarism isn't an offence in the committee process, or else Ms. Barkwell would find herself receiving a fail mark for plagiarism.

In any event, I think the evidence and commentary provided by any number of actuaries was particularly valuable. Jamie Jocsak, a young actuary who I think impressed all of us, and David Wolgelerenter, another young actuary who impressed all of us, along with other, more senior people in their profession—as well as Barry Corbin; he was here. He's a very established estates law lawyer. In addition, I think the final submission, that of Jason Howie from Windsor—you'll recall that family lawyer who, by God, actually understands the art of speaking in plain language. I suspect he's a particularly effective lawyer because of his ability to do that.

So the areas of concern of concern are these: As has been commented upon in the extraordinary letter by the 12 Family Court judges—and these are Family Court judges in probably the busiest Family Courts in the province, who talk about the unsuitability of clauses 6 to 10 of the bill. These are the areas relating to child custody. I join them, and I'll be making further reference to their letter when we address those clauses. I'm going to tell you I'm going to be voting against those clauses, in agreement with the judges and in support of the proposition that we need individual investigations. The judges proposed the Office of the Children's Lawyer, and that was one of the options that I had contemplated and considered during second reading debate.

The other issue of contention, of course, is the issue of the repeal of the Domestic Violence Protection Act. Research was very valuable in providing us with a list of the jurisdictions that have that broad-based, stand-alone legislation, and I still believe it's important that we have that. Nobody disputes the importance of this bill's creation of a court order that can be criminally prosecuted. All of us, in our professional lives, in our social lives or in our family lives, have probably had to deal with a scenario where police arrive at a scene and say, "No, this is a civil matter. It's a divorce action. It's a separation action. I'm not going to touch that with a 10-foot pole." And I understand the police officers—police officers enforce criminal law; I understand that. They don't want to get involved in it. So that's the second area.

The issue around the pensions is of great concern. I see a number of amendments, and Mr. Zimmer, I'm sure, is going to explain the rationale behind those amendments and what he believes they will do. We support and praise the government, as have others, for designing a formula—it's something that lawyers have sought for many years—whereby the payout of the spouse's share of the pension can come from the pension plan itself. Everybody agrees, I think, that that's a desirable thing. However, we've still got a stumbling point here in the contradictory observations by actuaries and family lawyers and other family lawyers and pension plan administrators about (1) the pension plan administrator doing the evaluation, and (2) the methodology.

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Mr. Zimmer will undoubtedly argue that the methodology will be addressed in regulation. That's too bad, so sad for so many of us, because we have no control over regulation. Even my colleagues on the government benches don't have any control over regulation. They'll be told about it the same time opposition members will—maybe even after opposition members find out about it.

This is what's going to help us streamline the process: We can move through the various areas that are rather benign, in my view, rather quickly, but then we've got the child custody issues, the repeal of the Domestic Violence Protection Act and the pension issues. Others may come up during the course of clause-by-clause, but those are the primary areas. We remain concerned about what this bill is going to look like when it appears before the House for third reading.

The Chair (Mr. Shafiq Qaadri): Are there any further comments of a general nature? Mr. Zimmer?

Mr. David Zimmer: No.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Zimmer. We'll now proceed to the clause-by-clause consideration. Just for reference to the committee, I'll invite block consideration of sections 1 through 5, inclusive, since we've received no amendments to date. Is that the will of the committee?

Mr. Peter Kormos: Just hold on, Chair. As I say, we've got to be careful because we want to expedite this, but not to the point of ignoring important discussions. I trust you're dealing with the Change of Name Act and the Child and Family Services Act up to, but not including, section 4?

The Chair (Mr. Shafiq Qaadri): Sections 1 to 5 have no amendments that have so far been submitted.

Mr. Peter Kormos: That may well be. That doesn't mean we deal with them as a block. I'm prepared to deal with sections 1 through 4 as a block, and we'll be supporting those sections.

The Chair (Mr. Shafiq Qaadri): Fair enough. Is that the will of the committee? Great. So those in favour of adopting sections 1 through 4—is that correct, Mr. Kormos?

Mr. Peter Kormos: Yes, sir. Thank you.

The Chair (Mr. Shafiq Qaadri): —sections 1 through 4, inclusive? Those opposed? Sections 1 through 4 carried.

We'll now proceed to consider section 5. The floor is open. Mr. Kormos?

Mr. Peter Kormos: No, sir. Thank you.

The Chair (Mr. Shafiq Qaadri): We'll proceed to consider the vote then. Those in favour of section 5? Those opposed? Section 5 carried.

Section 6, for which we have the first amendment—I'll offer the floor now to Ms. Elliott.

Mrs. Christine Elliott: I move that clause 21(2)(b) of the Children's Law Reform Act, as set out in section 6 of the bill, be struck out and the following substituted:

"(b) information respecting the person's current or previous involvement as a party in any family proceeding, including a proceeding under part III of the Child and Family Services Act (child protection), or as an accused in any criminal proceeding if the proceeding resulted in a finding of guilt or is ongoing; and"

The purpose of submitting this application, Chair, is to limit and focus the information that's needed to be presented to the court, in order to respond to some of the concerns expressed by presenters that this was too openended a section before.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Elliott. Any further questions, comments?

Mr. Peter Kormos: I don't oppose the amendment, but once again this addresses the concerns people had about relying upon a criminal record. The existence of a criminal record is, in and of itself, not a signal that somebody is going to be a bad custodial parent, and the absence of a criminal record is surely not, in and of itself, any indication of whether or not a person is going to be a bad custodial parent, which is why we are opting for the proposal of the 12 judges—if I may refer to them as that—and that is, that we have individual investigations; but we'll be supporting Ms. Elliott's motion.

The Chair (Mr. Shafiq Qaadri): Any further comments? We'll proceed to the vote.

Those in favour of PC motion 1? Those opposed? I declare PC motion 1 to have been defeated.

Seeing no further submissions for section 6, we'll consider section 6. Shall section 6—

Mr. Peter Kormos: If I may, Chair, this might be a little unusual, but can we deal with—I identified 6 to 10 as being the contentious sections. I'm prepared to deal with them as a block once all of the amendments have been made. Is that suitable? Because you can put, "Shall sections 6 to 10, as amended, carry?"

Interjection.

The Chair (Mr. Shafiq Qaadri): I'm informed by my ever-alert clerk that we will need to consider each section individually since we do have amendments coming forward. It's only when we have no amendments that we do the block consideration. The Chair commends your desire to expedite the process, though.

Mr. Peter Kormos: And I don't even smoke anymore, so it's not because I want to sneak outside.

The Chair (Mr. Shafiq Qaadri): That's also very worthy.

Shall section 6 carry—

Mr. Peter Kormos: Chair?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Kormos.

Mr. Peter Kormos: If I may, I'm opposed to section 6. I'll address 6 to 10 in their totality when we reach section 10.

The Chair (Mr. Shafiq Qaadri): We look forward to it.

Mr. Peter Kormos: So I ask for a recorded vote, please.

The Chair (Mr. Shafiq Qaadri): Section 6, a recorded vote.

Aves

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

Nays

Elliott, Kormos.

The Chair (Mr. Shafiq Qaadri): Section 6 is carried. We'll now proceed to section 7, PC motion 2.

Mrs. Christine Elliott: I move that subsection 21.1(1) of the Children's Law Reform Act, as set out in section 7 of the bill, be amended by striking out "Every person who applies under section 21 for custody of a child and who is not a parent of the child" at the beginning and substituting "Every person who applies under section 21 for custody of or access to a child."

The purpose of this amendment is to expand with respect to custody and access and to apply to the child's biological parent or anyone who's applying for custody, if it's the child's best interests that are paramount, which is the case.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Elliott. Mr. Kormos?

Mr. Peter Kormos: I'm going to support the amendment because it creates consistency, because custody and access are very similar in terms of putting a child who's all alone with no other adult supervision with that other adult, whether it's for a day, a weekend or, in the case of custody, for weeks at a time.

I'm going to repeat once again: We're all familiar with grandparents who have great hurdles to overcome in getting access to children sometimes, especially when there are hostile matrimonial circumstances. Does the fact that grandpa may have an old drunk-driving conviction—what does it mean? What does it say? I'm not sure it means or says anything. We don't submit parents on a regular basis to police record checks; we don't require them to be licensed for having children either. We don't require de facto natural parents to undergo these sorts of things.

We assume that a child has a right, and in fact, the law and all of the literature talks about the rights of children to know their parents, to have relationships with their parents, so this is part of the crazy scenario that we've developed here, or rather—I shouldn't be so generous—that the government has developed with all this records check, because children have a right to a parent. Even if that parent's a bank robber, children have a right to know their mother and father. So we're creating, in my view, crazy, bizarre scenarios that don't recognize, at the end of the day, the best interests of the child.

Let's cut to the chase. We're talking about records for sexual offences against children. Let's not be so subtle here. We're talking about records of violence against children, but we all know, based on our professional or social experience, that most pedophiles are only caught after their sixth, seventh, eighth, ninth, 10th attack on a child. That's the nature of the beast. So once again, the absence of a criminal record doesn't safeguard any children, does it?

I'm going to support the amendment because it underscores, in many respects, the whole problem that we have with this legislation.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos. Any further comments on PC motion 2? Seeing none, we'll proceed to the vote. Recorded, Mr. Kormos? *Interjection*.

The Chair (Mr. Shafiq Qaadri): Not recorded.

Section 7: Those in favour of PC motion 2? Those opposed? I declare PC motion 2 to have been defeated. We'll now proceed to consider the section. Shall sec-

tion 7 carry?

Mr. Peter Kormos: Recorded vote, please.

The Chair (Mr. Shafiq Qaadri): This is a recorded vote. Section 7—

Mr. Peter Kormos: We could have debated it before we voted on it, but I have no further comments to make. 1430

The Chair (Mr. Shafiq Qaadri): Gratifyingly. Those in favour of section 7?

Ayes

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

Nays

Elliott, Kormos.

The Chair (Mr. Shafiq Qaadri): Section 7 is carried. I will now proceed to section 8. PC motion 3, Ms. Elliott.

Mrs. Christine Elliott: I move that subsection 21.2(2) of the Children's Law Reform Act, as set out in section 8 of the bill, be amended by striking out "Every person who applies under section 21 for custody of a child and who is not a parent of the child" at the beginning and substituting "Every person who applies under section 21 for custody of or access to a child."

It's for the reasons stated with respect to the previous amendment.

The Chair (Mr. Shafiq Qaadri): Any further comments on PC motion 3? Seeing none, we'll proceed now to the vote. Those in favour of PC motion 3? Those opposed? PC motion 3 is defeated.

Government motion 4, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 21.2(2) of the Children's Law Reform Act, as set out in section 8 of the bill, be struck out and the following substituted:

"Request for report

"(2) Every person who applies under section 21 for custody of a child and who is not a parent of the child shall submit a request, in the form provided by the Ministry of the Attorney General, to every society or other body or person prescribed by the regulations, for a report as to,

"(a) whether a society has records relating to the per-

son applying for custody; and

"(b) if there are records and the records indicate that one or more files relating to the person have been opened, the date on which each file was opened and, if the file was closed, the date on which the file was closed."

The Chair (Mr. Shafiq Qaadri): Are there any comments? Ms. Elliott?

Mrs. Christine Elliott: I just had a question, Mr. Zimmer, as to the reason for the changes. Specifically what "or other body or person" would you be referring to there?

Mr. David Zimmer: There are 53 separate children's aid societies in Ontario. The idea here is to make sure that we are able to create a process that reflects the realities of record-keeping systems at the different CASs.

Mrs. Christine Elliott: So it's really just the total number of CASs you're referring to? Thank you.

The Chair (Mr. Shafiq Qaadri): Mr. Kormos?

Mr. Peter Kormos: You heard comments from children's aid societies about how unworkable this is. You've got children's aid societies, you've got Catholic ones, you've got Jewish ones and you've got aboriginal children's aid societies. They are separate entities because this government persists in maintaining a Victorian model of a transfer payment agency rather than the state assuming responsibility for protection of our children. This is a dog's breakfast. This is a horror show.

I just wish it weren't going to be the case, but mark my words that within the next six years there will be custody granted to somebody for whom it was believed an exhaustive check had been done. It will be after the fact, when something—hopefully it's only unpleasant—happens that all of a sudden it will appear that there was a children's aid society somewhere in Ontario, or perhaps not in Ontario, that had a horrendous intervention with that person or with his or her previous spouse and their stepchildren or what have you. That's part of the problem. This is a bureaucratic nightmare. Children's aid societies aren't going to come here and say that, because of course they like the transfer payment money. That's why the YWCA comes here and supports the government's repeal of the Domestic Violence Protection Act;

they don't want to tick off the ministry when it comes to any funding they might be eligible for.

I appreciate what you're trying to do here, Mr. Zimmer, and I know you didn't write the legislation. I'm not holding you accountable. You're here to do your best to defend this dog's breakfast. I respect the work that you do in that regard. All I can say is: Man oh man, we are courting disaster here, in my view.

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 4? Those opposed? Motion 4 is carried.

Government motion 5, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 21.2(4) of the Children's Law Reform Act, as set out in section 8 of the bill, be amended by,

(a) striking out "a society shall send to the court in which the application was filed a report" and substituting "a society or other body or person shall provide the court in which the application was filed with a report"; and

(b) striking out "and provide a copy" and substituting

"and shall provide a copy".

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll proceed to the vote. All those in favour of government motion 5? Those opposed? Motion 5 is carried.

Motion 6.

Mr. David Zimmer: I move that subsection 21.2(5) of the Children's Law Reform Act, as set out in section 8 of the bill, be amended by striking out "if the report of a society indicates that the society has records" in the portion before clause (a) and substituting "if the report indicates that there are records".

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, all those in favour of government motion 6? Those opposed? Government motion 6 is carried.

Government motion 7.

Mr. David Zimmer: I move that subsection 21.2(6) of the Children's Law Reform Act, as set out in section 8 of the bill, be struck out and the following substituted:

"Exception

"(6) The court may, on motion by the requesting party, order,

"(a) that the time period referred to in subsection (5) be lengthened; or

"(b) that all or part of the report be sealed in the court file and not disclosed if,

"(i) the court determines that some or all of the information contained in the report is not relevant to the application, or

"(ii) the party withdraws the application."

The Chair (Mr. Shafiq Qaadri): Further comments? Ms. Elliott.

Mrs. Christine Elliott: I do have some concerns with this because of the expressions by some of the parties presenting that these new provisions are going to lengthen the time already, and then if there's a further extension of time, this could very well act against the best interest of the child.

Secondly, it also poses the problem, what is the court to do with all of this information if you're requiring the court to be the record-keeper? It would be a far more expeditious and simple arrangement to have this investigation being conducted by someone other than the judge. It really puts the judge in an untenable position and puts information in the file that arguably should not be there.

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, we'll proceed to the vote. All those in favour of government motion 7? Those opposed? Motion 7 is carried.

Motion 8.

Mr. David Zimmer: I move that clauses 21.2(10)(a) and (b) of the Children's Law Reform Act, as set out in section 8 of the bill, be struck out and the following substituted:

"(a) specifying one or more societies or other bodies or persons to whom a request must be submitted;

"(b) governing the manner and scope of the search required to be undertaken in response to a request;"

The Chair (Mr. Shafiq Qaadri): Further comments? Mr. Kormos.

Mr. Peter Kormos: Here we are, we've got a bizarre, complex, complicated, unwieldy process as being more bizarre, more complex, more unwieldy. Here it is, Easter time, Passover—it's like the search for the Holy Grail. There's going to be this endless, endless, endless protracted search.

Mr. Zimmer knows, as does Ms. Elliott, that all the judges in this province are even-tempered; they're patient; they don't feel burdened by silly motions and silly exercises that are going to be imposed on them. But sure as God made little apples, I can see some judge just saying, "Look, for Pete's sake, let's get this done with. I'm going to sign an order waiving—I don't care what the bill says." Because, you see, nobody's going to be there arguing the statute, do you understand what I'm saying? It's just like Katelynn Sampson: Even when you've got lawyers, they will welcome a judge saying, "I'm going to waive this provision," because there's nobody to say, "No, you can't, Judge." The kid can't say that. You don't have an independent, third party who's going to be there in your design, in your scheme. So the judge is going to get frustrated. You've got unrepresented people, because the vast majority of family court litigants are unrepresented. They haven't got a snowball's chance in hell of tracking down all this information. There's nobody in the courthouse to help them. Duty counsel can't fill out forms for them—duty counsel can't even fill out forms-so duty counsel can't help them. Lord thundering Jesus, Mr. Zimmer, what are you creating here?

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All we're asking for is to let a judge have the power to say, "This doesn't pass the sniff test. I want the Office of the Children's Lawyer involved to conduct an investigation into the appropriateness of a custody order." It

addresses all of this, because even the current legislation allows an investigator, whether it's a children's-aid-type worker, a social worker or the Office of the Children's Lawyer, to say to the proposed custodial parent, "Here, I want you to sign this release of information for the Niagara children's aid society to find out whether there's any information." They currently have that power.

What are you doing here? Those courts are a mess already. So when one of those even-tempered, ever-patient judges, whom you've known so many of—and you, Mrs. Elliott—finally loses his or her cool, I don't want them phoning me. If they phone my office, I'm going to give them your direct line number.

The Chair (Mr. Shafiq Qaadri): Are there any further comments? Those in favour of government motion 8? Those opposed? Government motion 8 is carried.

We'll proceed to the vote. Shall section 8, as amended, carry?

Mr. Peter Kormos: Recorded vote.

Ayes

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

Nays

Elliott, Kormos.

The Chair (Mr. Shafiq Qaadri): Section 8, as amended, has carried.

We'll now proceed to section 9, a PC motion. Mrs. Elliott.

Mrs. Christine Elliott: I move that subsections 21.3(1) and (2) of the Children's Law Reform Act, as set out in section 9 of the bill, be struck out and the following substituted:

"Other proceedings

"Application by non-parent

"21.3(1) Where an application for custody of a child is made by a person who is not a parent of the child, the clerk of the court shall provide to the court and to the parties information in writing respecting any current or previous family proceeding in which the child or any person who is a party to the application is or was involved as a party.

"Same

"(2) Where an application for custody of a child is made by a person who is not a parent of the child, the court may require the clerk of the court to provide to the court and to the parties information in writing respecting any current or previous criminal proceeding in which any person who is a party to the application and who is not a parent of the child is or was involved as an accused, if the proceeding resulted in a finding of guilt or is ongoing."

This amendment is made simply to limit the information that would be coming forward, just to be more specific, that it needs to be a family proceeding in which they were a party and if there was a finding of guilt found in a criminal proceeding.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Kormos.

Mr. Peter Kormos: Once again, I say to the government side, the clerks of these courts—again, go down to Jarvis Street, go down to 311 Jarvis. The clerks' office has got files piled all over it. Every once in a while, there's a slide and you've got to put the pieces back together. They've got people requesting to look at this file and that file. These clerks—and you know them—are harried; they're bouncing off the walls. You don't have time frames here. You've got the prospect of files that are supposed to be there but that aren't there being misplaced, and you've got proceedings—where? In that courthouse alone? That's naive. You can't rely on that. Is it within a 100-kilometre range? It's just nuts.

You're talking about Superior Court as well as Family Court. Parties: If part of the parenting plan involves, let's say, grandparents, many people seeking custody will say, "Look, I've got my parents to help me take care of the child because I'm working." That's a common experience, to try to expand or build a stronger foundation for their application. So then do you do the grandparents? Do you do the grandparents' other children, to wit, the siblings who may be visiting the grandparents from time to time while the child is there?

You know I've been pretty hard-line on the best interests of the child being paramount; the law says that. I've been pretty tough on one judge in particular, and I still am, but I don't think this is the solution. It just creates impossible standards, which at the end of the day don't do much. You've got a judge—oh, yeah, I can just see this judge, him or her, with a pile of dusty old case folders and just roaring at the poor clerk, saying, "But this involved a dispute over child support payments that was resolved. What are you doing making me read through this file? Look, we've got a line up there—look at the lineup—and you're making me read this stuff about a dispute over support payments that was resolved, even on consent?" Because that's what you're talking about, isn't it? I think so. We shall see, won't we, Chair?

The Chair (Mr. Shafiq Qaadri): Thank you. Are there any further comments? Seeing none, we'll now proceed to the vote. Those in favour of PC motion 9? Those opposed? PC motion 9, defeated.

We'll consider now the section. Shall section 9—

Mr. Peter Kormos: There being no further debate on section 9, I'm going to ask you for a recorded vote.

The Chair (Mr. Shafiq Qaadri): Yes. No further debate on section 9, we'll now have a recorded vote.

Mr. Peter Kormos: As amended—or not amended, rather.

The Chair (Mr. Shafiq Qaadri): I'm informed that's a new section, so we'll move to section 9.1 Shall section 9 carry?

Ayes

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

Nays

Elliott, Kormos.

The Chair (Mr. Shafiq Qaadri): Section 9, carried. We'll now proceed to consider PC motion 10, section

9.1, new section. Ms. Elliott?

Mrs. Christine Elliott: I move that the bill be amended by adding the following section:

"9.1 The act is amended by adding the following section:

"Children's Lawyer

"21.4(1) Despite subsection 21(2) and sections 21.1, 21.2 and 21.3, documents and information required to be provided to or filed with the court under any of those provisions in respect of an application for custody or access shall instead by provided to the Children's Lawyer if any of the following circumstances apply:

"1. The application is unopposed.

"2. Any party to the application is unrepresented.

"3. The court determines that it is in the best interests of the child.

"Investigation and report

"'(2) If the Children's Lawyer receives documents or information under subsection (1) in respect of an application for custody or access, the Children's Lawyer shall cause an investigation into the matter to be made under section 112 of the Courts of Justice Act and shall report and make recommendations to the court in accordance with that section.

"Powers of court

"(3) Upon receipt of the report of the Children's Lawyer, the court may,

"(a) require the Children's Lawyer to provide to it any of the documents or information that the Children's Lawyer received under subsection (1); or

"(b) require any person or body to provide such additional documents or information in relation to the application as the court directs."

This amendment is in response to the letter sent to the committee by the Family Court justices, the Family Lawyers Association and numerous private practitioners, that the system, as proposed by Bill 133, for investigating the custody of children is unwieldy, unworkable and unlikely to achieve the purpose intended, which is to protect children.

This addresses the concerns that the unrepresented parties will have no reasonable means of working their way through the applications and the various submissions that they need to be making, and it also requires self-reporting, which, according to one of the presenters, was not something that you should base your premise on; it's something that you just rely on their honesty in bringing some of this information forward; plus the fact that these documents, especially with respect to a parenting plan, are going to be very difficult for unrepresented applicants to prepare on their own.

Since there's no indication that there's going to be extensive support for legal aid in the future or someone to help the people complete these documents, I would submit that the preparation of a report following an investigation by the Children's Lawyer is the most cost-effective and easiest way to make sure that children are protected. Certainly, that has been advocated by the courts, which, again, are being placed in a very difficult position of having piles of material placed before them, as Mr. Kormos has indicated, most of which may be irrelevant in the course of determining the whole issue. In order to save court time, to not put the judge in the position of an investigator and to assist the unrepresented parties to the action, I would submit that to have the Office of the Children's Lawyer submit an investigation report would be the best way to handle the situation.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs.

Elliott. Further comments? Seeing none—

Mr. Peter Kormos: I just recalled old Judge Don Wallace, who died, oh, a year and a half ago. Although not everybody was a fan of his, I was. He was a curmudgeonly judge who I had a great deal of affection for, and fought vigorously with, openly. But you just made me recall Don Wallace ripping his eyeglasses off, throwing them across the bench, scowling and saying, "What is this crap?" Don Wallace is dead now and God rest his soul, but I suspect that there are more than a few Don Wallace genes floating out there in the pool of our judiciary.

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The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos.

Mr. Peter Kormos: Think nothing of it, Chair. Just the reminiscences of a middle-aged man.

The Chair (Mr. Shafiq Qaadri): Which we respect greatly.

Any further comments on PC motion 10? Seeing none, we'll proceed to the vote. Those in favour of PC motion 10? Those opposed? PC motion 10, defeated. Thus, section 9.1, which would have been a new section, is also defeated.

May it be the will of the committee to consider sections 10 to 14, inclusive, as we have so far not received any amendments.

Mr. Peter Kormos: If I may, let's just be careful as we go through—10 to 14, inclusive? Yes, sir.

The Chair (Mr. Shafiq Qaadri): Thank you.

Those in favour of sections 10 to 14, inclusive? Those opposed? Sections 10 to 14, carried.

We'll now proceed to consider section 15, PC motion 11. Ms. Elliott?

Mrs. Christine Elliott: I move that subsection 35(2) of the Children's Law Reform Act, as set out in section 15 of the bill, be struck out.

I would submit that this section is unnecessary, that the restraining orders already provide for these types of restrictions.

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, those in favour of PC motion 11? Those opposed? PC motion 11, defeated.

Government motion 12.

Mr. David Zimmer: I move that paragraph 1 of subsection 35(2) of the Children's Law Reform Act, as set out in section 15 of the bill, be amended by striking out "the applicant and any child" and substituting "the applicant or any child."

Mr. Peter Kormos: Can you explain that one please, Mr. Zimmer?

Mr. David Zimmer: The idea of the amendment is to clarify the wording that you find in paragraph 1 of subsection 35(2). The revised wording of "the applicant or any child" better reflects the current wording of the restraining order provision in the Children's Law Reform Act.

Further, an order could still be made to apply to an applicant or a child, but legislative counsel has advised independently that this wording is better.

Mr. Peter Kormos: You know you're provoking debate over the conjunctive "or" versus the exegetical "or." You know that, don't you, Mr. Zimmer?

Mr. David Zimmer: I'm not joining the debate, Peter.

Mr. Peter Kormos: I regret that.

Mr. David Zimmer: But I know what you're commenting on.

The Chair (Mr. Shafiq Qaadri): Thank you. Any further comments or questions? Seeing none, we'll proceed to the vote. Those in favour of government motion 12? Those opposed? Motion 12, carried.

Shall section 15, as amended, carry? Recorded vote, Mr. Kormos?

Mr. Peter Kormos: No, sir.

The Chair (Mr. Shafiq Qaadri): No, not recorded. Shall section 15, as amended, carry? Those in favour? Those opposed? Carried.

May it be the will of the committee to consider sections 16 and 17, inclusive, seeing as no amendments have been received?

Mr. Peter Kormos: Yes, sir.

The Chair (Mr. Shafiq Qaadri): Those in favour of sections 16 and 17? Those opposed? Carried.

Section 18, PC motion 13. Ms. Elliott.

Mrs. Christine Elliott: I move that subsection 70(3) of the Children's Law Reform Act, as set out in section 18 of the Bill, be amended by adding "with notice to the parties to the application referred to in that subsection" at the end.

This is simply to ensure that notice is given of this application.

The Chair (Mr. Shafiq Qaadri): Any further comments on PC motion 13? Those in favour of PC motion 13? Those opposed? Defeated.

PC motion 14. Ms. Elliott?

Mrs. Christine Elliott: I move that section 70 of the Children's Law Reform Act, as set out in section 18 of the bill, be amended by adding the following subsection:

"Offence

"(5) Every person who contravenes an order made under subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000."

It just simply adds significant penalties for non-compliance.

The Chair (Mr. Shafiq Qaadri): Comments? Those in favour of PC motion 14? Those opposed? PC motion 14 is defeated.

Shall section 18 carry? Carried.

May it be the will of the committee to consider sections 19 to 21, inclusive, seeing as no amendments—yes, Mr. Kormos?

Mr. Peter Kormos: No; 19 and 20, please.

The Chair (Mr. Shafiq Qaadri): Fair enough. Sections 19 and 20: Those in favour? Those opposed? Sections 19 and 20, carried.

Section 21: There are no amendments received, but the floor is open. Mr. Kormos?

Mr. Peter Kormos: Again, this has been the subject matter of a whole lot of conversation and discussion, indeed debate. I was here and I recall being on committee when the Domestic Violence Protection Act went through the committee process.

The single most important part of that bill is the opportunity for a partner who is the victim of direct, indirect or feared violence against person or property to appear before a justice of the peace without any other process and get an ex parte restraining order against the other party. Everybody supports the amendments contained in this bill that permit a court order to be enforced by the police as a breach of the Criminal Code, but the process has to be initiated before you can even get an interim order.

First, you've got to go to the court and get the forms. The court staff won't fill out the forms for you, and I don't blame them because that's not their job; they're doing other things. Duty counsel won't fill out the forms for you. If a lawyer fills out the forms for you, you not only have to pay, but it's going to take several days to get into a lawyer's office. Otherwise you're walking around with these forms. Staff in our constituency offices, of course, can't assist people in litigation, but some staff, I think, are quite within their rights to explain to people what the forms say. I say bless them for doing that. If, from time to time, they assist them in a spelling error or perhaps a little bit with lexicon, again, I applaud them for doing that. But even for our constituency staff, that's a time-consuming process. It probably takes, I'd say, a good hour, or at least half an hour, to fill out these forms. That's with a reasonably skilled person.

First of all, most people can't get the forms filled out. Then you've got to file the forms. Then the proper service has to be done on the respondent, on the other party. Then you've got to get a date in front of a judge.

Go to some of these courtrooms. You've got hallways packed with young offenders, because the young offender courts are inevitably in the same building, so you've got kids with tattoos and earrings and swastikas on their foreheads and the whole nine yards wandering around. You've got women with their spouses glaring at them across the hallway, just glaring at them—the daggers, right, mouthing the inevitable threats. They're sitting

there in these stained, stinky, dusty, crowded hallways where there's not enough seating for all the people, so people are standing. They're waiting for their names to be called, and then by 4:30 in the afternoon, you've got a judge who says, "Okay, bring them in. We've got to adjourn the rest of the list because there just isn't time to do it." They've got court staff who have been working since 8 a.m. You've got a judge who's starting to lose his or her mind—

Interjection.

Mr. Peter Kormos: Well, seriously, who just can't think clearly anymore, and to his or her credit says, "No, I don't trust myself to go any further." Some push themselves, and that's when, sadly, sometimes mistakes are made.

So you've got the possibility of not just days but weeks before a victim gets in front of a judge and is able to tender enough affidavit evidence or otherwise to get the judge to sign a restraining order. This isn't a perfunctory process like you have in some of the Superior Court processes where the clerk can sign an order, right? There are some functions that the clerk can perform. That's, quite frankly, pretty close to the DVPA, where a JP can perform it.

This is good. It creates a restraining order that the police can enforce, but the DVPA allows—I'm going to say "woman" here, but it doesn't have to be women; heck, obviously with same-sex marriages now you're going to have, and you do have, domestic violence in gay marriages, woman-woman, man-man and so on, not just marriages but relationships—the party, if they fear for themselves or their property, to go at 2 in the morning to the JP on duty and say, "I fear that so-and-so is out there." Look, "I fear" is a far different cry than "I know."

I just think that it's a shame to abandon the DVPA. It hasn't been proclaimed, God bless, and maybe we'll never get around to proclaiming it, because maybe we'll never have the structure in place to deal with it. But I agree that it was fundamentally sound, because those ex parte orders were available only in very limited circumstances, and the types of things that could be ordered were very limited as well. You needed an order on notice with both parties present arguing the case before they had the expanded list of conditions that a JP could put in an order.

I support the restraining order part of this legislation, the New Democrats support it, but why you're getting rid of the DVPA beats me. I, quite frankly, simply don't believe the presenters from the YWCA and Luke's Place. I believe that's a hackneyed phrase, that "we soon learn that it's impossible to enforce." I've got a feeling I think I know where that language came from. It's just a feeling, Mr. Zimmer. It's my intuitive side taking over. My intuition tells me that that was a phrase that was somehow scripted.

So I've got to vote against this. I encourage government members to please reconsider it. Eliminating this from the bill doesn't change the substance of the bill

whatsoever, does it? It doesn't change it one iota, but it gives this government or subsequent governments a chance to work on the DVPA.

Not to belabour the point, but look, in cabinet, when ministries develop policy positions, like Bill 133-and with Bill 133, a lot of this stuff was floating around long before the bill was written, because it was policy that had been drafted, the pension stuff and so on had been drafted and been worked on. What prompted this was the Katelynn Sampson furor. Make no mistake about it. That's what prompted this. That's what ratcheted this up into the top of the line. Cabinet ministers fight with the Premier's office to get bills into the House, and then they fight with the Premier's office as to which bill is going to be called. And you've got any number of considerations: "Well, Minister So-and-So has had three bills this year; I've not had any and I want one." So you've got these considerations. You've got the Premier's office as a gatekeeper. You've got any number of cabinet committees that vet these things and try to second-guess the policy drafters. So you don't get domestic violence bills before the House every year. It doesn't happen. It's once every 10 years—correct me if I'm wrong; you know the history of family law legislation in this province.

So I'm begging you folks: Give your government or any subsequent government something to work with when it comes to the DVPA. We learned about all the other jurisdictions that have it. I think this is a real shame. This is perhaps the saddest part of this legislation, because I remember the enthusiasm about the DVPA, the enthusiasm by women's groups and advocates for women and people involved in the domestic violence struggle. I'll be voting against the repeal of the DVPA, obviously.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. Elliott, further comments on section 21?

Mrs. Christine Elliott: I just have a brief comment, and that is, I'm on the record as indicating that, in my view, we need to have a separate domestic violence protection statute. However, I do commend the government for dealing with the restraining orders part of this, but I still can't understand, as Mr. Kormos has indicated, why it's necessary to repeal the Domestic Violence Protection Act. It really adds another tool to the arsenal to protect both men and women who are involved in domestic violence situations. So I'd really urge the government to reconsider.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Elliott. Mr. Zimmer.

Mr. David Zimmer: I just want to go on record as pointing out that some very, very distinguished and long-time advocates who have spent their professional careers and life dealing with and combatting across the board all of the issues involving violence against women—a couple of names spring to mind: Pam Cross and Amanda Dale from the YWCA, and Carol Barkwell from Luke's Place. These advocates, these knowledgeable women who have spent their careers combatting violence against women, support the repeal of the Domestic Violence Protection Act. They are the experts in the area. They are

the front-line workers. They know what they're talking about. They support this repeal.

Mr. Peter Kormos: Oh, please, Mr. Zimmer. Three people out of hundreds, at least, if not thousands. Come on, now. Stop that. You know better than that.

The Chair (Mr. Shafiq Qaadri): Any further comments on section 21?

Mr. Peter Kormos: Recorded vote, please.

Ayes

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

Nays

Elliott, Kormos.

The Chair (Mr. Shafiq Qaadri): Section 21 is carried.

PC motion 15, Ms. Elliott.

Mrs. Christine Elliott: I move that the bill be amended by adding the following section after the heading "Family Law Act":

"21.1 The Family Law Act is amended by adding the following section:

"Orders regarding conduct

"2.1 In making any order under this act, the court may also make an interim order prohibiting, in whole or in part, a party from directly or indirectly contacting or communicating with another party, if the court determines that the order is necessary to ensure that an application under this act is dealt with justly."

This is a housekeeping amendment, essentially, because this was repeated in three sections of the bill—27, 29 and 36—so this simplifies by adding this provision to be applicable to the entire act.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Elliott. Any further comments? Those in favour of PC motion 15? Those opposed? PC motion 15 is defeated.

We will now consider section 22. Government motion 16, Mr. Zimmer.

Mr. David Zimmer: I move that section 22 of the bill be amended by adding the following subsection:

"(0.1) Clause (a) of the definition of 'net family property' in subsection 4(1) of the Family Law Act is repealed and the following substituted:

"(a) the spouse's debts and other liabilities, including, for greater certainty, any contingent tax liabilities in respect of the property, and"

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 16? Those opposed? Motion 16 is carried.

PC motion 17, Ms. Elliott.

Mrs. Christine Elliott: I move that clause (c) of the definition of "property" in subsection 4(1) of the Family Law Act, as set out in subsection 22(3) of the bill, be struck out and the following substituted:

"(c) in the case of a spouse's rights under a pension plan that have vested or that may vest or be granted in the future, the net family law value of the spouse's interest in the plan, as determined in accordance with section 10.1, for the period beginning with the date of the marriage and ending on the valuation date; ('bien')"

This amendment has been suggested to deal with the significant unfairness, expressed to us by several presenters, to the non-pension-holding spouse if one uses only one value for equalization purposes. This just indicates that it would include, for a pension purpose, the rights that have already vested or that may be vesting in the future, the so-called contingent rights.

The Chair (Mr. Shafiq Qaadri): Further comments? We'll proceed to the vote. Those in favour of PC motion 17? Those opposed? PC motion 17 is defeated.

Government motion 18, Mr. Zimmer.

Mr. David Zimmer: I move that clause (c) of the definition of "property" in subsection 4(1) of the Family Law Act, as set out in subsection 22(3) of the bill, be amended by striking out "the net family law value of the spouse's interest" and substituting "the imputed value, for family law purposes, of the spouse's interest."

The Chair (Mr. Shafiq Qaadri): Further comments? Mrs. Christine Elliott: I was wondering if Mr. Zimmer could explain to us what "the imputed value" is

and what the purpose is behind this amendment.

Mr. David Zimmer: The value of the pension entitlement has been renamed "the imputed value, for family law purposes, of the spouse's interest" to avoid confusion between the name in the bill, "net family law value," and the well-established family law concept of net family property.

Mrs. Christine Elliott: But what would the imputed value constitute?

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Mr. David Zimmer: Just a second. I have one of the ministry experts who can tackle that question.

Mr. Peter Kormos: Quick, before eyes glaze over entirely.

Mr. David Zimmer: Mr. John Gregory.

Mr. John Gregory: Thank you, Mr. Chairman. John Gregory, general counsel of the policy division, Ministry of the Attorney General. With me is Cynthia Crysler, who is the pension specialist for the Ministry of Finance, as well.

In response to Ms. Elliott's question, the content of the imputed value for family law purposes will be prescribed by regulation. It's dealt with in the Pension Benefits Act. Section 67.2 of the Pension Benefits Act, which, of course, will be before the committee shortly, deals with how you find that. At present, we're doing it with the Family Law Act and we're plugging that value into the Family Law Act for those purposes, but what the content is is in the Pension Benefits Act. But much of the content is, in fact, to be prescribed by regulation.

Mrs. Christine Elliott: I guess my question would be, will you be taking into account both the vested and non-

vested part of the pension, as recommended by the actuaries who presented to the committee?

Mr. John Gregory: That's the intention, Ms. Elliott. There is nothing in the wording of the act that restricts the benefits to vested benefits. There's nothing in the bill here that would restrict that to vested benefits. It's the intention to cover, for example, early retirement benefits, which is one of the principal issues that were discussed during the submissions from the public.

Mrs. Christine Elliott: I'm sorry—so you do intend to cover that in the regulations, that that will be included

for equalization purposes?

Ms. Cynthia Crysler: In the previous version and the original version of the FLA, the definition of "property" said "vested pension benefits." Bill 133, as it is originally, took the "vested" out, which meant that it would now be pension property, not just vested, but vested and unvested. So a further amendment is not required to make it clear that pension property includes unvested.

Mrs. Christine Elliott: But now "imputed" is being substituted as a different expression of—

Ms. Cynthia Crysler: It's just a label; it's just a new label to avoid confusion with "net family property." That actually doesn't change any of the substance of the act. It's just a different name so that we don't have confusion between two names that were quite similar.

The Chair (Mr. Shafiq Qaadri): Mr. Kormos.

Mr. Peter Kormos: I know what "imputed" means, just in general. What does "imputed value" mean when you're talking about a pension value?

Ms. Cynthia Crysler: It would mean what the regulations govern this additional towns

lations say it means. It is a defined term.

Mr. Peter Kormos: Okay.
Ms. Cynthia Crysler: It's not necessarily going to mean what the dictionary definition means. It's going to have to be given meaning.

Mr. John Gregory: The same as "net family property value" had no meaning either. It is an expression to indicate a new concept which is a value, because it hasn't been possible in the past to assign parts of the pension plan to the non-member spouse. So we needed a concept, which in the bill is "net family property value." People said, "Well, that sounds really like 'net family property' that we deal with in equalization." So we said, "Okay, we'll call it something else so we don't have to remember, 'Oh, that's the pension's"—

Mr. Peter Kormos: Were there other words that were options—did you have a list to pick from?

Ms. Cynthia Crysler: Legislative counsel came up with that.

Mr. Peter Kormos: Okay, but help us put this in context. I don't think this is unfair. We all tend to agree about the legislation of alternative ways of a spouse getting his or her share of a spouse's pension, right? The controversy was around two issues. One was the pension plan administrator evaluating. We set that aside because that's a totally separate issue. Then the second controversial issue was the methodology of determining the value, right?

Mr. John Gregory: Yes.

Mr. Peter Kormos: We were constantly being told that that's going to be dealt with by regulation also. I know we're moving a bit—but I want to understand this in the context of the whole debate here. Is that a correct observation?

Mr. John Gregory: Yes. There was a discussion among the people submitting to the committee about what is in that valuation for family law purposes. That valuation for family law purposes, which is what's covered by this expression "imputed value for family law purposes" will be prescribed by regulation, but it includes the provisions that are set out in subsections 67.2(1) and (2), which are essentially the commuted value plus ancillary benefits to be prescribed, but the actual regulation is not before the committee.

Mr. Peter Kormos: Gotcha. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you. Are there any further questions on government motion 18?

Mr. Peter Kormos: Mr. Ramal, surely you have something to—

Mr. Khalil Ramal: No, I'm convinced by what he said.

Mr. Peter Kormos: You're convinced of what?

Mr. Khalil Ramal: His statement, the explanation.

The Chair (Mr. Shafiq Qaadri): Thank you. Are there any further comments? Seeing none, we'll proceed to the vote. Those in favour of—yes?

Mr. Peter Kormos: Chair, should these people perhaps just stay here because I think we're going to—

Mr. David Zimmer: I'll call them as needed.

Mr. Peter Kormos: Okay, but then they're up and down like jack-in-the-boxes.

The Chair (Mr. Shafiq Qaadri): Thank you. Those in favour of government motion 18?

Mr. Peter Kormos: Hold on. Here we are, government motion.

The Chair (Mr. Shafiq Qaadri): Those in favour of government motion 18? Those opposed? Government motion 18 carried.

Shall section 22, as amended, carry?

Mr. Peter Kormos: Recorded vote. Well, let's have some debate on this first.

The Chair (Mr. Shafiq Qaadri): We are here to do precisely that.

Mr. Peter Kormos: Thank you. Just very quickly, look, this is the whole problem. I don't even know if they make thermometers anymore with mercury in them, but if you break one of those and try to pick it up, it's all over the place. This is the problem here.

I have no quarrel with, again, the language of imputed value except that "imputed value" implies certain things to me. It implies to me a little sense of what the regulation is going to look like. Do you understand what I'm saying?

I'm not going to support this because this is part of the real dog's breakfast. This the ugliest—look, you know the old line about two things you don't want to watch being made: sausage and legislation? This is the best pos-

sible example of it. You've got people on this committee voting on stuff, and they have no bloody idea what it means, with all due respect, no damned idea of what they're voting on or what they're supporting.

Look, I understand faith. Save it for the Easter Sunday service. We need more than faith here. There is great controversy around these provisions, and with all due respect—well, I don't want to speak for everybody. Maybe Mr. Ramal has his head around this, he's got a handle on it, and he could do a one-hour lecture on it standing on his head, or Mr. Dhillon. I know I can't. It's still just so vague, so amorphous, so hard to get a grasp on. I think this is a very dangerous exercise, and it's a very unsettling one to see legislators—that's us—voting on stuff when we haven't got the slightest bloody idea what we're voting on. I find that troublesome. I'm voting against it because I just don't think we're ready to start passing this kind of stuff.

Mr. David Zimmer: Well, maybe you should find one of your colleagues to substitute for you on the committee.

Mr. Peter Kormos: Well, we've got a few minutes. Perhaps you could explain in more detail the provisions here, Mr. Zimmer. Mr. Zimmer? I didn't think so.

The Chair (Mr. Shafiq Qaadri): Mrs. Elliott.

Mrs. Christine Elliott: Thank you, Chair; just a brief comment. I am very concerned about this, too, to substitute a word that's going to be defined in the regulations. I know we were clearly warned against this by not one but several of the actuaries who appeared before us who said that this very clearly has to be dealt with in the act itself; it can't be something that's left to regulations. I agree that it is a very amorphous concept. I don't understand the whole rationale behind these amendments, and until I do, I can't vote for it either.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Elliott. Are there any further comments on section 22?

Mr. Peter Kormos: Recorded vote, please.

Ayes

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

Nays

Elliott, Kormos.

The Chair (Mr. Shafiq Qaadri): I declare section 22, as amended, to have been carried.

We'll proceed now to section 23, government motion 19, Mr. Zimmer.

Mr. David Zimmer: I move that clause 6(6)(c) of the Family Law Act, as set out in section 23 of the bill, be struck out and the following substituted:

"(c) the recipient of property or a portion of property to which the surviving spouse becomes entitled by right of survivorship or otherwise on the death of the deceased spouse." 1520

The Chair (Mr. Shafiq Qaadri): Further comments?

Mr. David Zimmer: I'd just like to speak to it. The proposed amendment is based on recommendations that were made to this committee by estates lawyer Mr. Barry Corbin. The amendments are also supported by other members of the family and estate bar. The intention of the amendment is to include property, other than just property held in a joint tenancy, in the credit to a deceased spouse's estate against the equalization payment that is owed to the surviving spouse.

I have to say that, having heard from Mr. Corbin at this committee, it shows indeed the value of having these committee hearings. Mr. Corbin took the time, in a very articulate and thoughtful way, to organize his thoughts, and this is the result of it.

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll proceed to consider government motion 19. Those in favour? Those opposed? Motion 19 is carried.

Government motion 20.

Mr. David Zimmer: I move that paragraph 1 of subsection 6(7) of the Family Law Act, as set out in section 23 of the bill, be struck out and the following substituted:

"1. The amount of every payment and the value of every property or portion of property described in that subsection, less any contingent tax liability in respect of the payment, property or portion of property, shall be credited against the surviving spouse's entitlement under section 5."

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 20?

Mr. David Zimmer: I should say that my comments that I made earlier, having heard from Mr. Barry Corbin and others, apply to this amendment also.

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 20? Those opposed? Government motion 20, carried.

Government motion 21.

Mr. David Zimmer: I move that paragraph 3 of subsection 6(7) of the Family Law Act, as set out in section 23 of the bill, be struck out and the following substituted:

"3. Paragraphs 1 and 2 do not apply in respect of a payment, property or portion of property if,

"i. the deceased spouse provided in a written designation, will or other written instrument, as the case may be, that the surviving spouse shall receive the payment, property or portion of property in addition to the entitlement under section 5, or

"ii. in the case of property or a portion of property referred to in clause (6)(c), if the surviving spouse's entitlement to the property or portion of property was established by or on behalf of a third person, either the deceased spouse or the third person provided in a will or other written instrument that the surviving spouse shall receive the property or portion of property in addition to the entitlement under section 5."

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 21? Those opposed? Government motion 21, carried.

Shall section 23, as amended, carry? Carried.

If it's the will of the committee, we'll consider sections 24 and 25, inclusive. Shall sections 24 and 25, inclusive, carry? Carried.

Section 26, government motion 22.

Mr. David Zimmer: I move that subsections 10.1(1) and (2) of the Family Law Act, as set out in section 26 of the bill, be amended by striking out "The net family law value of a spouse's interest" wherever it appears and substituting in each case "The imputed value, for family law purposes, of a spouse's interest".

The Chair (Mr. Shafiq Qaadri): Comments? Seeing none, those in favour of government motion 22? Those opposed? Government motion 22 carried.

Government motion 23, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 10.1(4) of the Family Law Act, as set out in section 26 of the bill, be struck out and the following substituted:

"Same

"(4) In determining whether to order the immediate transfer of a lump sum out of a pension plan and in determining the amount to be transferred, the court may consider the following matters and such other matters as the court considers appropriate:

"1. The nature of the assets available to each spouse at

the time of the hearing.

"2. The proportion of a spouse's net family property that consists of the imputed value, for family law purposes, of his or her interest in the pension plan.

"3. The liquidity of the lump sum in the hands of the

spouse to whom it would be transferred.

"4. Any contingent tax liabilities in respect of the lump sum that would be transferred.

"5. The resources available to each spouse to meet his or her needs in retirement and the desirability of maintaining those resources."

The Chair (Mr. Shafiq Qaadri): Further comments? Mr. Peter Kormos: I'm looking very carefully. This replaces the A times B over C formula, yes?

Mr. David Zimmer: Yes.

Mr. Peter Kormos: Why? Because I have a suspicion about what the goal is.

Mr. David Zimmer: Mr. Gregory?

Mr. John Gregory: The old subsection (4) of new section 10.1 dealing with the splitting of pensions was a formula that was aimed at limiting the amount that the non-member spouse could be forced to take out of a pension plan in equalization, the idea being that what you get out of the pension plan is locked in—it goes to an RSP—so it's not as good as cash, where normally with equalization you get cash, though you may get it over 10 years, depending on how much is available. The idea was, all right, the member can satisfy the equalization debt by giving the non-member spouse some part of the pension plan, but it shouldn't be more than the proportion of the

plan, the value of the plan to his total assets. Now, they could agree to take it all in pension, but if the spouse said, "No, wait a minute, I don't want it to be locked in," there was a limit there to protect a non-member spouse.

As it turned out, nobody wanted that. We talked to the family bar, including people who act for the non-member spouses as much as for the member spouses. They said, "This is not helpful. Let's just put in some provisions that let the court decide why you should do this." One of the factors of the five that are mentioned for the court to take into consideration in the amendment is in fact the liquidity of the lump sum—can you get at it, or is it not as good as cash? Is it locked in?—among other things, including the tax consequences, including private parties likely to need the money for retirement—is it better to lock it in than hand it out in cash?—and a couple of other things. So there are a number of factors that were not in the original bill that responded, essentially, to the Ontario Bar Association.

The Chair (Mr. Shafiq Qaadri): Mr. Kormos.

Mr. Peter Kormos: You recall that, yes, it was the OBA that wanted to overcome the 50% rule, the maximum 50%.

Mr. John Gregory: No, this does not do that. Mr. Peter Kormos: This does not address that?

Mr. John Gregory: It does not address that. The next—well, there's another amendment that we'll come to on that, but in fact the 50% rule is in place; it is not overridden. The amendments do not do what the bar association wanted on that 50% rule.

Mr. Peter Kormos: Fair enough. Because I'm reading, "An order made ... shall not provide for the immediate transfer" in excess of—in the existing subsection (4). Subsection (4) puts a cap.

Mr. John Gregory: Yes, but that cap dealt with the value of the pension compared to the value of the total net family property as a member spouse and has nothing to do with the amount proportionate to the amount of the pension plan. That limit is in subsection (6) of 10.1, which is the 50% cap. In fact, it pushes you back to the Pension Benefits Act, but it's very clear that it says no more than half. No more than half of what is one of the other points that was debated by the actuaries, but the 50% cap rather than, "Oh, they should be able to give 100% in the right case"—the amendments do not go to that submission.

Mr. Peter Kormos: Thank you kindly.

The Chair (Mr. Shafiq Qaadri): Are there any further comments or queries on government motion 23? We'll now proceed to the vote. Those in favour of government motion 23? Those opposed? Government motion 23 is carried.

Government motion 24, Mr. Zimmer.

Mr. David Zimmer: Mr. Chair, could we have a three-minute adjournment?

Mr. Peter Kormos: I'm agreeing because I have to go, too.

The Chair (Mr. Shafiq Qaadri): We'll recess—not adjourn, recess—for five minutes.

The committee recessed from 1527 to 1533.

The Chair (Mr. Shafiq Qaadri): As we have quorum, we'll resume committee proceedings. We are now considering government motion 24, which needs to be entered into the record. Mr. Zimmer.

Mr. David Zimmer: I move that section 10.1 of the Family Law Act, as set out in section 26 of the bill, be amended by adding the following subsection:

"Same

"(5.1) Subsections 9(2) and (4) do not apply with respect to an order made under section 9 or 10 that provides for the division of pension payments."

The Chair (Mr. Shafiq Qaadri): Thank you. Comments?

Seeing none, we'll proceed to the vote. Those in favour of government motion 24? Those opposed? Government motion 24 carried.

Government motion 25, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 10.1(7) of the Family Law Act, as set out in section 26 of the bill, be struck out and the following substituted:

"Transition, valuation date

"(7) This section applies whether the valuation date is before, on or after the date on which this section comes into force.

"Transition, previous orders

"(8) This section does not apply to an order made before the date on which this section comes into force that requires one spouse to pay to the other spouse the amount to which that spouse is entitled under section 5."

The Chair (Mr. Shafiq Qaadri): Thank you. Comments? Seeing none, we'll proceed to the vote. Those in favour of government—

Mr. Peter Kormos: One moment.

The Chair (Mr. Shafiq Qaadri): Okay.

Mr. Peter Kormos: This is the beginning of the axis of evil on the part of the government.

Mr. Khalil Ramal: Why is that?

Mr. Peter Kormos: Because you've got to remember that subsection 10.1(1) talks about "determined in accordance with section 67.2." Of course that's a new section, 67.2, of the Pension Benefits Act. That's the one that, among other things, provides that it's the plan administrator who will be determining value. As I say, this is the beginning of the evil part, and I'm going to want a recorded vote. Of course, we'll be voting against it.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments?

Mr. Peter Kormos: Recorded vote, please.

The Chair (Mr. Shafiq Qaadri): Recorded vote on government motion—shall section 26, as amended, carry?

Ayes

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

Nays

Elliott, Kormos.

The Chair (Mr. Shafiq Qaadri): Section 26, as amended, has carried.

May it be the will of the committee to consider sections 27 to 34, inclusive, seeing as we had no amendments? Those in favour of said sections, 27 to 34? Those opposed? Said sections carried.

Section 35: PC motion 26. Ms. Elliott.

Mrs. Christine Elliott: I move that subsection 46(3) of the Family Law Act, as set out in section 35 of the bill, be struck out.

This has been proposed, Mr. Chair, because it's redundant. The restraining orders can already provide for the orders that are set out in this section.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Elliott. Comments? Those in favour of PC motion 26? Those opposed? PC motion 26, defeated.

Government motion 27, Mr. Zimmer.

Mr. David Zimmer: I move that paragraph 1 of subsection 46(3) of the Family Law Act, as set out in section 35 of the bill, be amended by striking out "the applicant and any child" and substituting "the applicant or any child."

The Chair (Mr. Shafiq Qaadri): Thank you. Comments? Those in favour of government motion 27? Those opposed? Government motion 27, carried.

We'll proceed to consider the section vote. Shall section 35, as amended, carry? Recorded vote, Mr. Kormos?

Mr. Peter Kormos: We've got to debate these things.

The Chair (Mr. Shafiq Qaadri): Pardon me?

Mr. Peter Kormos: We've got to debate these sections, as amended.

The Chair (Mr. Shafiq Qaadri): Please proceed.

Mr. Peter Kormos: No, thank you.

The Chair (Mr. Shafiq Qaadri): Thank you.

Shall section 35, as amended, carry? Carried.

Section 36: There are no amendments so far received, so unless there's commentary, we'll consider the vote. Shall section 36 carry? Carried.

Section 37, PC motion 28. Ms. Elliott?

Mrs. Christine Elliott: I move that section 56.1 of the Family Law Act, as set out in section 37 of the bill, be amended by adding the following subsection:

"Transition

"(2) This section applies whether the valuation date is before, on or after the date on which this section comes into force but it does not apply to a domestic contract made before the date on which this section comes into force."

Simply a transition provision, Mr. Chair, to make sure that it's consistent throughout.

The Chair (Mr. Shafiq Qaadri): Any further comments? Those in favour of PC motion 28? Those opposed? I declare PC motion 28 to have been defeated.

Government motion 29. Mr. Zimmer?

Mr. David Zimmer: I move that section 56.1 of the Family Law Act, as set out in section 37 of the bill, be struck out and the following substituted:

"Provisions re pension plan

"Family law valuation date

"56.1(1) In this section,

"family law valuation date' means, with respect to the parties to a domestic contract,

"(a) the valuation date under part I (family property)

that applies in respect of the parties, or

"(b) for parties to whom part I does not apply, the date on which they separate and there is no reasonable prospect that they will resume cohabitation.

"Immediate transfer of lump sum

"(2) A domestic contract may provide for the immediate transfer of a lump sum out of a pension plan, but, except as permitted under subsection (3), not for any other division of a party's interest in the plan.

"Division of pension payments

"(3) If payment of the first instalment of a party's pension under a pension plan is due on or before the family law valuation date, the domestic contract may provide for the division of pension payments, but not for any other division of the party's interest in the plan."

The Chair (Mr. Shafiq Qaadri): There is page 2, Mr. Zimmer.

Mr. David Zimmer: Oh, I'm sorry.

"Restrictions re certain pension plans

"(4) If the Pension Benefits Act applies to the pension plan, the restrictions under sections 67.3 and 67.4 of that act apply with respect to the division of the party's interest in the plan under a domestic contract.

"Valuation

"(5) Subsections 10.1(1) and (2) apply, with necessary modifications, with respect to the valuation of a party's interest in a pension plan.

"Transition, family law valuation date

"(6) This section applies whether the family law valuation date is before, on or after the date on which this section comes into force.

"Transition, previous domestic contracts

"(7) This section does not apply to a domestic contract that provided, before the date on which this section comes into force, for the division of a party's interest in a pension plan."

The Chair (Mr. Shafiq Qaadri): Are there any further questions or comments? We'll proceed then to the vote. Those in favour of government motion 29? Those opposed? I declare government motion 29 to have been carried.

Shall section 37—

Mr. Peter Kormos: One moment, please, Chair. If I can beg your indulgence.

The Chair (Mr. Shafiq Qaadri): Yes, please continue.

Interjections.

Mr. Peter Kormos: Sorry, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you. We proceed now to consider section 37, as amended. Shall it carry? Those opposed? Carried.

Section 38: To date we have not received any amendments, so we can proceed directly to the vote unless there are any comments. Shall section 38 carry? Carried.

Section 38.1, new section. Government motion 30. Mr. Zimmer?

Mr. David Zimmer: Government motion 30?

The Chair (Mr. Shafiq Qaadri): Government motion 30.

Mr. David Zimmer: Just a second.

I move that the bill be amended by adding the following section:

"38.1 The act is amended by adding the following section:

"Award re pension plan

"Family law valuation date

"59.4.1(1) In this section,

""family law valuation date" means, with respect to the parties to an arbitration,

"(a) the valuation date under part I (family property)

that applies in respect of the parties, or

"(b) for parties to whom part I does not apply, the date on which they separate and there is no reasonable prospect that they will resume cohabitation.

"Immediate transfer of lump sum

"(2) A family arbitration award may provide for the immediate transfer of a lump sum out of a pension plan, but, except as permitted under subsection (3), not for any other division of a party's interest in the plan.

"Division of pension payments

"(3) If payment of the first instalment of a party's pension under a pension plan is due on or before the family law valuation date, the family arbitration award may provide for the division of pension payments, but not for any other division of the party's interest in the plan.

"Restrictions re certain pension plans

"(4) If the Pension Benefits Act applies to the pension plan, the restrictions under sections 67.3 and 67.4 of that act apply with respect to the division of the party's interest in the plan under a" domestic contract.

"Valuation

"(5) Subsections 10.1(1) and (2) apply, with necessary modifications, with respect to the valuation of a party's interest in a pension plan.

"Transition, family law valuation date

"(6) This section applies whether the family law valuation date is before, on or after the date on which this section comes into force.

"'Transition, previous" domestic contracts

"(7) This section does not apply to a" domestic contract that provided, before the date on which this section comes into force, for the division of a party's interest in a pension plan.

The Chair (Mr. Shafiq Qaadri): Comments on government motion 30? Mr. Kormos?

Mr. Peter Kormos: I'm just curious as to the need for this, because how would there be retroactivity?

Mr. David Zimmer: The new section does for family law arbitration awards what the earlier section 10.1 did for the court orders and 56.1 did for domestic contracts; that is, it sets out the valuation principles for pension assets and says how they can be split between the parties. Since the family equalization payments may arise under any of those three documents, the act should deal with all three.

Mr. Peter Kormos: I hear you, but you've got an arbitration award that predates the enactment of this legislation. How would this legislate—it makes it clear that there is no retroactivity, I believe. This is more just a matter of curiosity. I agree that there shouldn't be retroactivity, but why do we need this? Would it otherwise be retroactive?

Mr. David Zimmer: Mr. Gregory?

Mr. John Gregory: I think the idea is, because the general provisions of the beginning of that section essentially say that any family arbitration award may—it says "a family arbitration" in subsection (2) of the motion: "A family arbitration award may provide for the immediate transfer of a lump sum...." So the question is, what about ones already made? For greater certainty, at any rate, it's nailing it down the same as when it says "a court order." All three of the transition provisions in 10.1(8) and in 56.1 and in here are intended for the same purpose, which is to say that this doesn't mean that you can go back and try to get in under the new section. You can't go to the administrator and ask for a valuation and you can't split the pension. If your rights are settled, they're settled.

Could you otherwise? Well, you might say, "I have an award that says I have to pay equalization, but it doesn't say anything about pensions, so I want to split the pension because otherwise, I have trouble funding it." The answer is no. We had some debate and discussion with stakeholder groups about transition and when do you open it and when do you not open it, but the idea is, once this comes into force, you can't come back and reopen the old awards.

Mr. Peter Kormos: I understand. But this was more an abundance of caution?

Mr. John Gregory: It's really for greater certainty, that's right.

Mr. Peter Kormos: Thank you.

The Chair (Mr. Shafiq Qaadri): Are there any further comments?

Mr. David Zimmer: Chair, can we just recess for about 60 seconds?

Mr. Peter Kormos: Sure.

Mr. David Zimmer: I'm not going to go anywhere. Thank you.

Turning to my colleague, I thought perhaps there was something—

Mr. Peter Kormos: It's happened from time to time, hasn't it, Mr. Zimmer?

1550

The Chair (Mr. Shafiq Qaadri): Are there any further questions, comments or additions on government motion 30? Seeing none, we'll proceed with the vote. Those in favour of government motion 30? Those opposed? Government motion 30 carries.

Shall section 38.1, as amended, carry? Carried.

Section 39, PC motion 31.

Mrs. Christine Elliott: I move that section 39 of the bill be amended by adding the following subsection:

"(0.1) Section 69 of the act is amended by adding the following subsection:

"(1.1) The Lieutenant Governor in Council may make regulations prescribing the meaning of "relating to the acquisition or significant improvement of a matrimonial home" for the purposes of clause (b) of the definition of "net family property" in subsection 4(1)."

This amendment was proposed in response to some concerns expressed by presenters that there were other considerations to be brought to bear, this being one of them, in the determination of net family property.

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll proceed with the vote. Those in favour of PC motion 31? Those opposed? PC motion 31 is defeated.

Shall section 39-

Mr. Peter Kormos: One moment, please. The Chair (Mr. Shafiq Qaadri): Please.

Mr. Peter Kormos: Thank you.

So little has changed since Shelley Martel broke into the FRO office back in 1996 with a video camera. Seriously, so little has changed. It remains among the top five or six of the problems we deal with in our constituency offices. We have lawyers calling us asking us to access the FRO for them, because family lawyers get stonewalled. Money by payers, deducted from their paycheques, still disappears into black holes. It is still a bureaucratic nightmare. The computer systems—and Lord knows how many millions upon millions of taxpayers' dollars have been spent on them—still seem to be incapable of coping. We still can't, through our constituency offices—we can provide the name, address, SIN number and employment place of a defaulting payer, and it's like talking to a brick wall. We've got payers whose drivers' licences are suspended when they've got all the documentation in the world, including the paycheque stubs showing the deductions. It is a horror show; it remains one.

In general in family law, the easy cases, the cases where parties are co-operative—heck, they don't need the family law. They work things out. People take care of their custody issues and take care of their access issues and everybody acts relatively maturely. The FRO has great expertise at collecting the easy ones, but it remains totally incapable of dealing with the difficult ones. We don't need the FRO to collect the easy ones; we need the FRO to collect the defaulters, and Lord knows we need the FRO to stop screwing payers whose paycheques are getting deductions, yet whose spouses are calling them

saying, "I'm not getting a cheque." They both come into my office. They've been through nasty divorces, but they've got a common problem. They'll come into the office together just holding their heads, and our staff spend far too much time with FRO.

So here you've got the LG in Council making regulations relating to child support obligations, including the obligation to advise of your new income. I don't know; it's pretty ambitious. Lord knows creating yet a second bureaucracy is fraught with potholes—we were talking about potholes earlier today—and using the existing FRO, which can't handle the work that it's got before it, without addressing that seems to be so incredibly problematic. That operation has been bungled ever since the 11 regional offices were dissembled and so-called integrated up at the MTO area in—is that Willowdale?

Interjection.

Mr. Peter Kormos: Downsview. Keele and the 401.

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll proceed with the vote. Those in favour of section 39? Those opposed? Section 39 is carried.

We'll now proceed to the next section, section 40. Government motion 32, Mr. Zimmer.

Mr. David Zimmer: I move that section 40 of the bill be amended by adding the following subsection:

"(1.1) Subsection 1(1) of the act is amended by adding the following definition:

""family arbitration award" means a family arbitration award made under the Arbitration Act, 1991; ("sentence d'arbitrage familial")"

The Chair (Mr. Shafiq Qaadri): Are there any further comments on motion 32? Seeing none, we'll proceed to the vote. Those in favour of government motion 32? Those opposed? Motion 32 is carried.

We'll proceed now to consider the section. Shall section 40, as amended, carry? Those opposed? Carried.

May it be the will of the committee to consider sections 41 and 42, inclusive, seeing as we've not received any amendments? Those in favour of sections 41 and 42? Those opposed? Carried.

Section 43. Government motion 33, Mr. Zimmer.

Mr. David Zimmer: I move that section 43 of the bill be struck out and the following substituted:

"43. Subsection 48(13) of the act is repealed and the following substituted:

"Restriction on entitlement

"(13) An entitlement to a benefit under this section is subject to any right to or interest in the benefit set out in an order made under part I (family property) of the Family Law Act, a family arbitration award or a domestic contract."

The Chair (Mr. Shafiq Qaadri): Thank you. Any further comments on government motion 33? There are none. We'll consider the vote. Those in favour of government motion 33? Those opposed? Motion 33 is carried.

If there are no further comments, we'll consider the section vote. Those in favour of section 43, as amended? Carried.

We'll proceed directly to the vote, unless there are comments, on section 44, as we have not received any amendments. Those in favour of section 44? Those opposed? Carried.

Section 45. Government motion 34, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 45(2) of the bill be struck out and the following substituted:

"(2) Subsection 65(3) of the act is repealed and the following substituted:

"Exemptions

"(3) Subsections (1) and (2) do not apply to prevent the assignment of an interest in money payable under a pension plan or money payable as a result of a purchase or transfer under section 42, 43, clause 48(1)(b), sections 67.3 or 67.4 or subsection 73(2) by an order under the Family Law Act, by a family arbitration award or by a domestic contract."

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Zimmer. Any comments on government motion 34? Seeing none, we'll proceed to the vote. Those in favour of government motion 34? Those opposed? Motion 34 is carried.

Shall section 45, as amended, carry? Carried.

May it be the will of the committee to consider sections 46 and 47, inclusive, seeing as we've not received any amendments to date? Yes. Those in favour of sections 46 and 47? Those opposed? Carried.

Section 48. Government motion 35, Mr. Zimmer.

Mr. David Zimmer: I move that the definition of "family arbitration award" in subsection 67.1(1) of the Pension Benefits Act, as set out in section 48 of the bill, be struck out.

The Chair (Mr. Shafiq Qaadri): Comments?

Vote: Those in favour of government motion 35? Those opposed? Motion 35 is carried.

Motion 36, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 67.2(1) of the Pension Benefits Act, as set out in section 48 of the bill, be struck out and the following substituted:

"Valuation for family law purposes

"Preliminary valuation, member or former member

"67.2(1) The preliminary value of a member's pension benefits or a former member's deferred pension or pension under a pension plan, before apportionment for family law purposes, is determined by the administrator in accordance with the regulations and as of the family law valuation date of the member or former member and his or her spouse.

"Same, spouse

"(1.1) The preliminary value of the pension benefits or pension of the spouse of a member or former member under a pension plan, before apportionment for family law purposes, is determined by the administrator in accordance with the regulations and as of the family law valuation date of the spouse and the member or former member."

The Chair (Mr. Shafiq Qaadri): Thank you. Comments, government motion 36?

Vote: Those in favour of government motion 36? Those opposed? Motion 36 is carried.

PC motion 37, Ms. Elliott.

1600

Mrs. Christine Elliott: I move that subsections 67.2(2) and (3) of the Pension Benefits Act be amended by striking out "ancillary benefits" wherever it appears and substituting in each case "additional non-vested benefits"—simply to conform with the wording that was used by the actuaries with respect to vested and non-vested or contingent benefits.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments on PC motion 37?

Those in favour of PC motion 37? Those opposed? PC motion 37 is defeated.

PC motion 38: Ms. Elliott?

Mrs. Christine Elliott: I move that subsection 67.2(5) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by adding "or to an actuary" after "to the administrator of the pension plan"—to allow for the valuation by actuaries in addition to pension plan administrators.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Elliott. Mr. Kormos?

Mr. Peter Kormos: I think this is an important effort on the part Mrs. Elliott to try to mitigate some of the error of the government in this regard. We didn't have a very full discussion at this committee, did we, Mrs. Elliott, about the problems around pension plan administrators valuing pensions?

The discussion becomes all that much more significant in these volatile times, when we've seen pension funds eroded to the tune of 30% and 40%. We talked about the inclination of a pension plan administrator—first of all, not being an actuary; secondly, using a formula, a methodology, that purports to be a one-size-fits-all; and thirdly, being disinclined to undermine the stability of that pension plan. The money is being paid out, for instance, at a time when the value of that pension plan's investments is minimal because of the equity interests that it holds. As everybody knows, that's precisely the wrong time to sell, because you automatically lose.

I buy the argument from the actuaries that a pension plan administrator inherently—because we heard about the fiduciary duty. The fiduciary duty isn't to any given member, as I understand it—and please, Mr. Zimmer, call your folks if I'm wrong—the fiduciary duty is to the plan itself; it's to the broader plan. There's a fiduciary duty, obviously, to members, but it seems to me that the greater fiduciary duty is to the broader plan. That could impact on how a pension plan administrator values a particular pension. And I'm not saying he or she is going to be motivated by anything less than integrity, but in fact could be motivated by his or her fiduciary duty to the plan.

What Mrs. Elliott is proposing here is that parties be given some choice about whether they use the pension plan administrator, who's going to charge a fee in any event. And you'll recall this whole committee process

started with this myth—it seemed to me that the parliamentary assistant was reading a tale out of Grimm's Fairy Tales, because it started with the myth of duelling actuaries, didn't it? The impression that the government wanted to create was that these actuaries are hired guns who go in there and cost the parties thousands of dollars because you have a plaintiff's actuary and a defendant's actuary—a petitioner's actuary; I think that's better language, isn't it?—and they fight and fight, and the judge has to make rulings. What we found out is that it's a myth, the myth of duelling actuaries.

The government tried to sell this proposal on the basis of, it'll simplify things. What we learned is that most actuaries do their actuarial process based on a consideration of all of the facts: ages of people, their inclinations to retire early, what the pension plan provided for by way of early retirement; and, I presume, amongst other things, their net assets. Obviously, if somebody has substantial net assets, they're more inclined to take an earlier retirement than somebody who doesn't—and whether or not you've got three kids in post-secondary school. Boy, down where I come from, that's a really persuasive argument about whether or not you retire early. If you've still got a job, you don't retire early when you've got three kids in post-secondary—you don't. It's a simple matter of fact.

These are the sorts of things that it was suggested to me an actuary would take into consideration in performing their tailor-made evaluation. The pension plan administrator isn't going to be given that opportunity. First of all, we heard from a pension plan administrator, the one who, with pride, said he's not an actuary, nor is he a lawyer. I congratulated him at the very least on not being a lawyer, except I found the actuaries very bright and persuasive people.

I'm going to support this amendment because, although I'm still unsure about whether the administrator of the pension plan should be the person doing the evaluations, I'm not convinced it's going to be any cheaper for anybody. Why can't a party challenge the evaluation of the pension plan administrator? Why can't a party challenge? Why can't a party appeal to the court to say that this pension plan administrator, although he or she purports to use the formula, has fundamentally reached a flawed number?

Ms. Cynthia Crysler: Any fault of an administrator can be challenged at the Financial Services Commission of Ontario. They deal with pension administrators on a continuing basis and they speak to administrators about corrections before it becomes a court proceeding. If there's no correction and they believe that there has been an error, then they issue a decision.

Mr. Peter Kormos: I know, and I've dealt with FSCO on a whole lot of issues and I have a lot of respect for the folks there. But I've also had to deal with a whole lot of pension windups down in my community, factories that have shut down, and had to deal with FSCO around those, too. But to be fair, they contract the work out, right, so it's not FSCO that does the windups.

Why couldn't a party—never mind agreeing that FSCO has this oversight role—to a matrimonial action say, "Hooey, this valuation is a load of—it's just not accurate and does my party an injustice"?

Ms. Cynthia Crysler: The bill would allow a statement with the imputed value to also include other information by which an independent actuary outside of the organization could check the accuracy of the calculation.

Mr. Peter Kormos: Exactly. You see, this doesn't create any certainty at all, because you're still going to have people challenging the pension plan administrator's valuation.

Ms. Cynthia Crysler: Could I just say that in addition—

Mr. Peter Kormos: I was being hyperbolic, but that's okay. I got carried away.

Ms. Cynthia Crysler: The administrator does hire an actuary for these calculations. These calculations will be done by an actuary.

Mr. Peter Kormos: But wait a minute: So actuaries are still going to be called upon, but they're going to be hired by the pension plan administrator, not by the parties.

Ms. Cynthia Crysler: Yes. So they'll be subject to the fiduciary duties that the administrator is subject to.

Mr. Peter Kormos: So to the extent that anybody in the era of duelling actuaries—remember Gene Autry and that stuff, Mr. Zimmer? Roy Rogers and Gene Autry duelling outside the opening to the mine? So, if there ever is any duelling, is it going to be diminished? Actuaries have said it doesn't happen that much, but to the extent that it does exist, it will still persist, won't it? Why wouldn't it?

Ms. Cynthia Crysler: Right now, there are no regulations indicating how these calculations should be made. There is a standard promulgated by the Canadian Institute of Actuaries which leaves a lot of questions open to the judgment of the actuaries. If some of those judgments or all of those judgment measures are prescribed, then there will be far less room for debate about what the numbers should be.

Mr. Peter Kormos: No, I know, but you heard the actuaries say that that debate may be a good thing because it is as much—I'm putting words. They didn't call it as much an art as a science. But it seems to me it's like doctoring and lawyering and so many of the other professions. It is as much an art as a science from the actuary's perspective.

1610

Mr. John Gregory: The other thing is that the actuaries, as they told the committee, say, "We come up with a range rather than a single number." Well, that just pushes the duelling off to after the actuary at that point. I mean, the point of the bill is to reduce the amount of duelling to the maximum, and that may be not to zero, because some people will fight about anything, but the idea is that there will be a regulation that will come up with a single number and it will be as fair as possible.

Any number saying what is a value of something that will kick in in 25 years is not going to be 100% accurate, except by—

Mr. Peter Kormos: Chair, can I refer to the bell curve? That means that a certain number—and again, we did talk about Grimm's Fairy Tales: "The porridge is too hot; the porridge is too cold." The government does that all the time. In their polemic, they say, "Well, if the Conservatives oppose it from the right and the NDP oppose it from the left, we're like the porridge that tastes just right." So they use that rather fallacious argument all the time, that we're right down the middle, but when you're right down the middle, there are some losers—and I don't know how steep this bell curve is. I agree that you're going to capture some people bang on, but you're also suggesting, and the others have, that there are some people who are going to be at the downturn of the bell curve. Right?

Ms. Cynthia Crysler: There are now.

Mr. Peter Kormos: Yeah.

Ms. Cynthia Crysler: The actuaries aren't correct now. It depends on what the formula is, which we have already discussed with the CIA, in consultations with them, as well as with other groups, on the regulations.

Mr. Peter Kormos: But at least now if you have a dispute, a judge makes a determination between variances in actuaries. Right?

Ms. Cynthia Crysler: They often make orders that are unenforceable under the Pension Benefits Act because they don't understand the pension rules, which is part of the reason why having prescribed rules may help the situation.

Mr. Peter Kormos: So you're creating new rules?

Ms. Cynthia Crysler: Yes. But clearer.

Mr. Peter Kormos: Thank you very much, but it just seems to me that the choice provided by Ms. Elliott is a preferable one. If people want to use their plan administrator, God bless. If, instead, they want to hire their own actuary, I say God bless twice. There may be any number of reasons why a person may not—I don't want to argue with you folks, because you're not the bad guys; you're the good guys. These are the bad guys over here. But don't tell me that plan administrators don't screw up. Ask Mr. Sabia and his new employers, or at least the dissenting faction, over at the Caisse de dépôt. Somebody screwed up. That was some plan administration. Smooth move, guys—and gals, I suppose.

Thank you, Chair. I'm not going to flog this one to death, but I just wanted to—

Mr. David Zimmer: You already have.

Mr. Peter Kormos: We've still got third reading, Zimmer.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos.

Are there any further comments on PC motion 38? Seeing none, we'll proceed to the vote. Those in favour—

Mr. Peter Kormos: Recorded vote, please.

Aves

Elliott, Kormos.

Nays

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

The Chair (Mr. Shafiq Qaadri): PC motion 38 is defeated.

Government motion 39.

Mr. David Zimmer: I move that subsections 67.2(4) and (5) of the Pension Benefits Act, as set out in section 48 of the bill, be struck out and the following substituted:

"Imputed value for family law purposes

"(4) The imputed value, for family law purposes, of each spouse's pension benefits, deferred pension or pension, as the case may be, is that portion of the preliminary value that is attributed by the administrator, in accordance with the regulations,

"(a) to the period beginning with the date of the spouses' marriage and ending on their family law valuation date, for the purposes of an order under part I

(family property) of the Family Law Act; or

"(b) to the period beginning with the date determined in accordance with the regulations and ending on the spouses' family law valuation date, for the purposes of a family arbitration award or domestic contract.

"Application for statement of imputed value

"(5) The following persons may apply to the administrator of the pension plan, in accordance with the regulations, for a statement of the imputed value, for family law purposes, of each spouse's pension benefits, deferred pension or pension, as the case may be:

"1. In the case of spouses to whom part I of the

Family Law Act applies, either spouse.

"2. In the case of spouses to whom part I of the Family Law Act does not apply, the member or former member."

The Chair (Mr. Shafiq Qaadri): Comments on government motion 39? Mr. Kormos?

Mr. Peter Kormos: I trust this is just importation of the word "imputed"?

Mr. David Zimmer: The amendment changes the phrase "net family law value" to "imputed value, for family law purposes".

Mr. Peter Kormos: This is consistent with your other amendments that create this new beast.

Mr. David Zimmer: Yes, this is consistent.

Mr. Peter Kormos: This is like genetic engineering.

The Chair (Mr. Shafiq Qaadri): Any further comments to government motion 39? Seeing none, we'll proceed to the vote. Those in favour of government motion 39? Those opposed? Government motion 39, carried.

The committee thanks Mrs. Elliott for withdrawing PC motion 40, which was out of order given the defeat of PC motion 38. We'll proceed directly to government motion 41. Mr. Zimmer?

Mr. David Zimmer: I move that subsections 67.2(7), (8) and (9) of the Pension Benefits Act, as set out in

section 48 of the bill, be struck out and the following substituted:

"Duty to determine imputed value

"(7) Once the application is complete, the administrator shall determine the imputed value, for family law purposes, of each spouse's pension benefits, deferred pension or pension, as the case may be.

"Duty to provide statement

"(8) The administrator shall give a statement containing the prescribed information to both spouses within the prescribed period.

"Transition

"(9) Neither spouse is eligible to apply under paragraph 1 of subsection (5) for the statement if an order made under part I of the Family Law Act before the day on which this section comes into force requires one spouse to pay to the other spouse the amount to which the other spouse is entitled under section 5 (equalization of net family properties) of that act."

The Chair (Mr. Shafiq Qaadri): Thank you. Mr.

Kormos?

Mr. Peter Kormos: In the existing subsection (7)—and I understand you're again importing the word "imputed" instead of "net family law value," but it says, "net family law value (or values)", suggesting that there could be more than one number. You have "imputed value" but you don't have "(or values)", so I'm just wondering—

Mr. David Zimmer: Are you just wondering, or do

you want an answer?

Mr. Peter Kormos: No, I'm wondering; I wonder about these things.

Mr. David Zimmer: Well, wonder on.

Mr. Peter Kormos: Go ahead: You're obviously not going to answer it, are you, Mr. Zimmer?

Mr. David Zimmer: Would you like an answer?

Mr. Peter Kormos: Get the staff up here.

Mr. David Zimmer: I wasn't sure if you were just wondering or asking a question.

Mr. Peter Kormos: I was trying to be sensitive to other people.

Ms. Cynthia Crysler: I believe in the original Bill 133 "value (or values)" was a drafting error.

Mr. Peter Kormos: There you go.

Mr. John Gregory: The Legislation Act, 2006, already says, as did the Interpretation Act before it, that a singular includes a plural and vice versa. So you don't have to say "A" and plural "As" every time, including this one.

Mr. Peter Kormos: I think Mr. Zimmer should explain how we screwed that one up, sitting at your word processor, "net family value (or values)"; huh?

The Chair (Mr. Shafiq Qaadri): Are there any further questions, comments or wonderments on this particular motion? Seeing none, we'll proceed now to consider government motion 41. Those in favour? Those opposed? Government motion 41, carried.

Government motion 42. Mr. Zimmer?

Mr. David Zimmer: I move that paragraph 2 of subsection 67.3(1) of the Pension Benefits Act, as set out in

section 48 of the bill, be amended by striking out "No payment of" at the beginning and substituting "No payment of an instalment of".

Mr. Peter Kormos: I should indicate I'm going to support that.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos. Are there any further comments? Seeing none, those in favour of government motion 42? Those opposed? Government motion 42, carried.

Government motion 43. Mr. Zimmer?

Mr. David Zimmer: I move that subsection 67.3(1) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by adding the following paragraph:

"2.1 A statement of the imputed value, for family law purposes, of the member's pension benefits or the former member's deferred pension has been obtained from the administrator under section 67.2."

1620

The Chair (Mr. Shafiq Qaadri): Thank you. Comments? Seeing none, for government motion 43, those in favour? Those opposed? Government motion 43 is carried.

Government motion 44, Mr. Zimmer?

Mr. David Zimmer: I move that paragraph 4 of subsection 67.3(1) of the Pension Benefits Act, as set out in section 48 of the bill, be struck out and the following substituted:

"4. In the order, family arbitration award or domestic contract, the amount to be transferred as a lump sum is expressed,

"i. as a specified amount, or

"ii. as a proportion of the imputed value, for family law purposes, of the member's pension benefits or the former member's deferred pension."

The Chair (Mr. Shafiq Qaadri): Thank you. Comments? Seeing none, we'll proceed. Government motion 44, those in favour? Those opposed? Government motion 44 is carried.

Government motion 45, Mr. Zimmer?

Mr. David Zimmer: I move that section 67.3 of the Pension Benefits Act, as set out in section 48 of the bill, be amended by adding the following subsection:

"Transfer to eligible spouse's estate

"(4.1) If the lump sum is not transferred under subsection (4) before the death of the eligible spouse, the lump sum is payable instead to the eligible spouse's estate or as otherwise permitted by regulation."

The Chair (Mr. Shafiq Qaadri): Thank you. Are there any further—Mr. Kormos?

Mr. Peter Kormos: I'm wondering again, what would happen if this subsection weren't enacted?

Ms. Cynthia Crysler: Pardon me?

Mr. Peter Kormos: What would happen if this subsection weren't enacted, weren't part of the legislation?

Ms. Cynthia Crysler: Without this section, if the spouse dies after making an application—so they've got an agreement or order for equalization of property, they've made the application for the pension, and they die—then their RRSP is closed. Most people will end up

transferring the money to a locked-in RSP, so there would be nowhere for the money to go. If that was what they had selected under the list, the pension plan administrator would not be able to deposit the money anywhere, and they would have to unravel it, reverse it.

Mr. Peter Kormos: I understand. That's right, because when you die your RRSP isfunctus—right?

Ms. Cynthia Crysler: Yes.

Mr. Peter Kormos: So you've got no RRSP, it doesn't exist anymore, but somebody still owes you money. Literally, what would happen?

Mr. John Gregory: The short answer is that we really don't know. The bar association said it would be really helpful to say what happens if the spouse dies in the intervening period, so we put it in. Now you have an answer, rather than having a whole lot lawyers saying, "My god, what happens now," when there's no place to put the money, essentially.

Mr. Peter Kormos: Wouldn't it be far more interesting just to have some test cases?

Mr. John Gregory: The bar association, who are the lawyers who would be fighting them, preferred not to have to have a test.

Mr. Peter Kormos: That is interesting information, good information.

Mr. John Gregory: There would still be an equalization debt, in fact. You'd just have to figure out how to pay it.

Mr. Peter Kormos: Yes.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments on motion 45? Seeing none, those in favour of government motion 45? Those opposed? Motion 45 is carried.

Motion 46, Ms. Elliott, PC motion.

Mrs. Christine Elliott: I move that subsection 67.3(5) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by striking out "net family law value" and substituting "commuted value."

Again, this is to suggest that there may be more than one value that may be applicable in determining the net family law property.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Elliott. Further comments?

Mr. Peter Kormos: Recorded vote, please.

Ayes

Elliott, Kormos.

Navs

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

The Chair (Mr. Shafiq Qaadri): PC motion 46 is defeated.

Government motion 47, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 67.3(5) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by striking out "the applicable net

family law value of the pension benefits or deferred pension, as the case may be" at the end and substituting "the imputed value, for family law purposes, of the pension benefits or deferred pension, as updated for the purposes of this subsection if the regulations require the imputed value to be updated".

The Chair (Mr. Shafiq Qaadri): Thank you. Comments on government motion 47? We'll proceed to the vote. Those in favour of government motion 47? Those opposed? Motion 47 is carried.

Motion 48, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 67.3(8) of the Pension Benefits Act, as set out in section 48 of the bill, be struck out and the following substituted:

"Discharge of administrator

"(8) In the absence of actual notice to the contrary, the administrator is entitled to rely upon the information provided by the spouse in the application and is discharged upon making the transfer in accordance with the application and this section and making the adjustments required by subsection (7)."

The Chair (Mr. Shafiq Qaadri): Thank you. Comments? We'll proceed to the vote. Those in favour of government motion 48? Those opposed? Motion 48 is carried.

Motion 49. Mr. Zimmer.

Mr. David Zimmer: I move that subsection 67.3(10) of the Pension Benefits Act, as set out in section 48 of the bill, be struck out and the following substituted:

"Orders for support

"(10) This section does not affect any order for support enforceable in Ontario."

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 49? Seeing none, we'll proceed to the vote. Those in favour of government motion 49? Those opposed? Motion 49 is carried.

Government motion 50, Mr. Zimmer.

Mr. David Zimmer: I move that section 67.3 of the Pension Benefits Act, as set out in section 48 of the bill, be amended by adding the following subsections:

"Priorities

"(11) An entitlement to a transfer under this section prevails over any other entitlement under this act to a payment from the pension plan in respect of the member or former member.

"Same

"(12) For the purposes of subsection (11), an entitlement to a transfer under this section arises on application under subsection (2) by an eligible spouse."

The Chair (Mr. Shafiq Qaadri): Comments? Vote: government motion 50? Those opposed? Motion 50 carried.

Government motion 51, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 67.4(1) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by adding the following paragraph:

"2.2 A statement of the imputed value, for family law purposes, of the former member's pension has been obtained from the administrator under section 67.2."

The Chair (Mr. Shafiq Qaadri): Comments? Vote: Those in favour of government motion 51? Those opposed? Motion 51 is carried.

Motion 52, Mr. Zimmer.

Mr. David Zimmer: I move that paragraph 4 of subsection 67.4(1) of the Pension Benefits Act, as set out in section 48 of the bill, be struck out and the following substituted:

"4. In the order, family arbitration award or domestic contract, the amount of each pension instalment to be paid to the spouse is expressed,

"i. as a specified amount, or

"ii. as a proportion of the instalment otherwise payable to the former member."

The Chair (Mr. Shafiq Qaadri): Comments? Mr. Kormos.

Mr. Peter Kormos: Let's slow down. We've got an hour and a half. Clause-by-clause is going to be over by 6, and when you do it fast, people make mistakes.

The Chair (Mr. Shafiq Qaadri): Thank you for your caution, Mr. Kormos. Are there any further comments on government motion 52? Seeing none, we shall now proceed to the vote. Those in favour of government motion 52? Those opposed? I declare government motion 52 to have been won.

We'll now proceed to PC motion 52A. Ms. Elliott.

Mrs. Christine Elliott: I move that subsection 67.4(5) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by striking out "net family law value" and substituting "commuted value".

This has been added for the same reasons as the previous amendment, to suggest that there may be more than one value that may be applicable here.

The Chair (Mr. Shafiq Qaadri): Thank you. Comments on PC motion 52A? Seeing none, we'll proceed with the vote. Those in favour of PC motion 52A? Those opposed? PC motion 52A has been defeated.

We'll proceed now to government motion 53. Mr. Zimmer.

Mr. David Zimmer: I move that subsection 67.4(5) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by striking out "a share of the pension that exceeds 50 per cent of the applicable net family law value of the pension" at the end and substituting "a share that exceeds 50 per cent of the imputed value, for family law purposes, of the pension, as updated for the purposes of this subsection if the regulations require the imputed value to be updated".

The Chair (Mr. Shafiq Qaadri): Mr. Kormos?

Mr. Peter Kormos: I understand that this is the 50% rule, but I don't know—is this nothing more than incorporating the words "imputed value"?

Mr. David Zimmer: Just give me a second here.

Mr. Peter Kormos: It makes reference to "if the regulations." It doesn't have, in the current subsection—

Mr. David Zimmer: What the amendment does, Mr. Kormos, is change the language of the value and also ensure that the valuation can be updated if a certain time has passed between the date of the original valuation and

the date when payment is requested. The valuation date stays the same, but the value may have changed either up or down.

1630

Mr. Peter Kormos: It seems to me there was a recent Ontario Court of Appeal decision. There's a textile manufacturer out around your neck of the woods with a matrimonial dispute. The date of valuation was the date of separation, and in the course of the year and a half or so that it was going through the courts, the value of the business depreciated by almost \$2 million. His wife wanted the previous valuation to prevail. What the court used, what I read, was an extraordinary power, to be applied only under certain circumstances, to actually lower the valuation—because the guy didn't deplete his resources. He didn't run the company into the ground; he was just the victim of the economy. Was this sort of process never available before, or are you simply sort of codifying what courts have done from time to time?

Mr. John Gregory: There are two valuations going on. The case that you're referring to was a case about the equalization. Tami Moscoe, who's our family lawyer—

Mr. Peter Kormos: I'm right about the case, though, aren't I?

Mr. John Gregory: Yes. The Kerra case basically said—

Ms. Tami Moscoe: Serra.

Mr. John Gregory: —where the value of the net family property, if the payer collapsed, essentially, so that the equalization payment was his total net worth by the time he was going to come to pay it—there is an unconscionability rule in the Family Law Act that says, "No, you can stop there." Normal changes in valuation—you value the house and it goes up or down—you leave. It's the date of separation. But in extraordinary cases, you can do something else.

This provision in front of the committee now is more focused, but it basically aims at protecting the integrity of the pension assets, because the 50% cap is set there. You might do a valuation two years before you get the payment out, and to preserve the integrity of the plan—it isn't the unconscionability vis-à-vis the member compared to the non-member; it's the plan. You get 50% of the plan. Is the value still there? If so, yes, you get maybe higher. Start today, and maybe in two years plans will be worth more, so the 50% cap is higher when you do the valuation at the time of payout. But if it's lower, you've got the 50% that's lower. That doesn't change the equalization obligation, though. That's just how much you can get out of the plan.

Mr. Peter Kormos: Again, you understand what happened down where I come from at Atlas Steels, where we had a huge workforce. The company shut down. The workers were paying out—and that was when they had to pay cash, right? They had to pay out cash—50% of the value of their pension plans while they were still working. The value of their plan was based on their defined benefit, yet when the plant shut down, the pension fund was grossly underfunded, so these guys are getting 60%

of the defined benefit. It just rots their socks that the spouse has got the cash on the dash, and they're living with 60% with no hope of ever seeing the rest. But this opportunity to revalue exists only within the time frame of the process?

Ms. Tami Moscoe: And the Family Law Act still requires us to value a spouse's assets at the date of separation. That's the scheme of equalization that we're not purporting to change.

The Serra case was different, because it didn't go directly to the valuation of the asset. What it did was go to the fairness, for lack of a better word, of the equalization payment in that extreme case.

What the cap does is look at the amount to be transferred to satisfy a portion of the equalization payment, and looks to the limit that should be applied at that time.

Mr. Peter Kormos: Can you give us a "for example"? Ms. Tami Moscoe: Right now, under the Pension Benefits Act, there are regulations that a commuted value payout, if somebody terminates, can be reduced and then the difference paid out over time if the funded ratio of the plan is a certain level. So there are regulations existing that deal with that. Right now, there's nothing to connect a marriage breakdown payout to it, but that is allowed by this authority.

Mr. Peter Kormos: So the focus of this is to protect the pension plan and its interests, not necessarily the interests of a party?

Mr. John Gregory: It's still the party that has the advantage of the other 50%. So if the value of the member's share has declined and then you take 50% out of it, you take less out than you would if it had been higher. So it protects the member from having more than half of whatever the value is at the time of the payout. To that extent it protects the member. It does not protect the member from an equalization payment in the circumstances you were talking about.

Mr. Peter Kormos: Outside of the pension.

Mr. John Gregory: Outside of the pension. There's not much you can do about that, unfortunately. It's like the house that used to be worth half a million—

Mr. Peter Kormos: This is all part of the broad calculation.

Ms. Tami Moscoe: Or the business or any other asset.

Mr. Peter Kormos: It's just the extent to which the pension plan payout is going to be part of his equalization package—

Ms. Tami Moscoe: Correct.

Mr. Peter Kormos: —or her equalization package.

Mr. John Gregory: Right.

Mr. Peter Kormos: Okay. So, yes, I understand that. I think I do. Yes, sure. As a matter of fact, I do.

Interjection: It took three people that time.

The Chair (Mr. Shafiq Qaadri): Are there any further comments on government motion 53? We'll proceed to the vote. Those in favour of motion 53? Those opposed? Motion 53, carried.

Government motion 54.

Mr. David Zimmer: I move that subsection 67.4(6) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by striking out "The administrator is discharged" at the beginning and substituting "In the absence of actual notice to the contrary, the administrator is entitled to rely upon the information provided by the spouse in the application and is discharged."

The Chair (Mr. Shafiq Qaadri): Comments on gov-

ernment motion-

Mr. Peter Kormos: Excuse me, Chair. What's your little summary on this one, Mr. Zimmer?

Mr. David Zimmer: What the amendment does, Mr. Kormos, is ensure that the administrator can rely on the representations of fact made in the application and is not required to go behind such representations to see if they are true—for example, whether the spouses are actually separated and actually have no prospect of reconciliation.

Mr. Peter Kormos: Okay.

The Chair (Mr. Shafiq Qaadri): Any further comments on government motion 54? Seeing none, we'll proceed to the vote. Those in favour of government motion 54? Those opposed? Government motion 54, carried.

Government motion 55.

Mr. David Zimmer: I move that section 67.4 of the Pension Benefits Act, as set out in section 48 of the bill, be amended by adding the following subsection:

"Orders for support

"(7) This section does not affect any order for support enforceable in Ontario."

The Chair (Mr. Shafiq Qaadri): Further comments on motion 55? We'll proceed to the vote. Those in favour of government motion 55? Those opposed? Motion 55, carried.

Motion 56.

Mr. David Zimmer: I move that section 67.4 of the Pension Benefits Act, as set out in section 48 of the bill, be amended by adding the following subsections:

"Waiver of joint and survivor pension

"(8) Despite subsection 46(2), the eligible spouse may waive his or her entitlement to a joint and survivor pension after payment of the first instalment of the former member's pension is due and before the pension is divided in accordance with this section.

"No cancellation

"(9) A waiver authorized by subsection (8) cannot be cancelled.

"Special case, combining payments

"(10) The following rules apply if the eligible spouse is entitled to a joint and survivor pension in respect of the former member in addition to being entitled to payment of a share of the former member's pension in accordance with this section:

"1. The eligible spouse may make a written request, in the form approved by the superintendent, to the administrator for payment of a single pension from the pension plan instead of payment of a share of the former member's pension and payment of a joint and survivor pension. "2. If the pension plan so permits, the administrator

may comply with the request.

"3. When the eligible spouse begins to receive the single pension, he or she ceases to be entitled to payment of the share of the former member's pension and to payment of the joint and survivor pension in respect of the former member."

The Chair (Mr. Shafiq Qaadri): Comments?

Mr. Peter Kormos: I don't know what your notes say on this—and I noticed that the budget included a provision for payout of 50% of LIRAs, I believe is what they're called. Is this part of the new trend?

Mr. David Zimmer: Yes. The intent here is that the additions allow for the non-member spouse to combine his or her entitlement to share the member's pension payments under this section with his or her separate right to a survivor pension after the member dies and also get a combined pension that does not depend on the life or death of the member. The combination of benefits is already allowed under the PBA for pensions before retirement but the provisions to be added by these amendments are needed so that it can be done in the context of a family equalization transfer. Pension administrators and family lawyers both want this change made.

Mr. Peter Kormos: So I trust, from what you're saying, this again goes back to having to juggle various components to reach the equalization number. We were just talking about that.

Mr. David Zimmer: Do you want more detail?

Mr. Peter Kormos: Yes, please. Mr. David Zimmer: Okay.

Ms. Cynthia Crysler: Right now, when a member retires and has a spouse, that spouse is entitled to a joint and survivor pension. If they did a split of the pension payments, then they would get one stream of payments and then they would start to get the joint and survivor. So through these sections, they can agree, or the spouse can agree, to just collapse that into a single life pension, an actuarially equivalent pension that just starts from the time they make their agreement. So they won't get two different pensions. They won't get part of the member's pension and then a joint and survivor. They'll get those amounts sort of combined into one stream of payments.

Mr. Peter Kormos: That's in lieu of a cash payout

plus survivor.

Ms. Cynthia Crysler: Yes. No, in this case, this is for retired members. There's no lump sum payment if you're already retired. It's a stream of payments. You get to split your stream of payments if you're already retired.

Mr. Peter Kormos: Okay. So the non-member spouse, she—here again, I say "she"; it could be "he"—is entitled, by virtue of being the spouse of the pension plan member, to get their survivor pension, notwithstanding that the pension plan member is still alive.

Ms. Cynthia Crysler: The survivor pension would start after the plan member died.

Mr. Peter Kormos: Okay, notwithstanding that they were divorced.

Ms. Cynthia Crysler: Yes.

Mr. Peter Kormos: That's the key here. Okay.

The Chair (Mr. Shafiq Qaadri): Thank you for the comments.

Mr. Peter Kormos: You know, Mr. Zimmer, if these people had been around here over the last couple of weeks at the table, this might have been much easier.

Mr. David Zimmer: Things are very easy today.

The Chair (Mr. Shafiq Qaadri): Any further comments on government motion 56? We'll proceed to the vote. Those in favour of government motion 56? Those opposed? Government motion 56, carried.

Government motion 57.

Mr. David Zimmer: I move that section 67.5 of the Pension Benefits Act, as set out in section 48 of the bill, be struck out and the following substituted:

"Restriction on other ways of dividing pension benefits, etc.

"67.5(1) An order made under part I (family property) of the Family Law Act, a family arbitration award or a domestic contract is not effective to the extent that it purports to require the administrator of a pension plan to divide the pension benefits, deferred pension or pension, as the case may be, of a member or former member of the plan otherwise than as provided under section 67.3 or 67.4.

"Transition, valuation date

"(2) This section applies whether the family law valuation date for the member or former member and his or her spouse is before, on or after the date on which this section comes into force.

"Transition, previous orders, etc.

"(3) This section does not apply to an order, family arbitration award or domestic contract to which section 67.6 applies."

The Chair (Mr. Shafiq Qaadri): Comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 57? Those opposed? Motion 57, carried.

Motion 58. Mr. Zimmer?

Mr. David Zimmer: I move that subsection 67.6(1) of the Pension Benefits Act, as set out in section 48 of the bill, be struck out and the following substituted:

"Other transitional matters

"67.6(1) This section applies to an order under part I (family property) of the Family Law Act, family arbitration award or domestic contract that requires one spouse to pay to the other spouse the amount to which that spouse is entitled under section 5 (equalization of net family properties) of that act, if the order, award or contract was made before the date on which this section comes into force.

"Amendments

"(1.1) The application of this section to an order, family arbitration award or domestic contract described in subsection (1) is not affected by an amendment or variation made on or after the date on which this section comes into force to the order, award or contract, if,

"(a) the order, award or contract provided, before that date, for the division of a party's interest in a pension plan; and

"(b) the amendment or variation is made in order to facilitate or effect the division of the party's interest in the pension plan in accordance with the order, award or contract."

The Chair (Mr. Shafiq Qaadri): Comments on government motion 58? Those in favour? Those opposed? Government motion 58 is carried.

Government motion 59.

Mr. David Zimmer: I move that subsection 67.6(2) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by striking out the portion before clause (a) and substituting the following:

"Timing of payment

"(2) The order, family arbitration award or domestic contract is not effective to require payment of a pension benefit before the earlier of."

The Chair (Mr. Shafiq Qaadri): Comments on government motion 59? Those in favour? Those opposed? Government motion 59 is carried.

Government motion 60.

Mr. David Zimmer: I move that subsection 67.6(3) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by striking out "The order or domestic contract" at the beginning and substituting "The order, family arbitration award or domestic contract."

The Chair (Mr. Shafiq Qaadri): Comments on government motion 60? We'll proceed to the vote. Those in favour of government motion 60? Those opposed? Government motion 60 is carried.

Government motion 61.

Mr. David Zimmer: I move that subsection 67.6(4) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by,

(a) striking out "the order or domestic contract" and substituting "the order, family arbitration award or domestic contract"; and

(b) striking out "the contract or order" at the end and substituting "the order, award or contract."

The Chair (Mr. Shafiq Qaadri): Comments on government motion 61? We'll proceed to the vote. Those in favour of government motion 61? Those opposed? Government motion 61 is carried.

Government motion 62.

Mr. David Zimmer: I move that subsection 67.6(5) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by striking out "If the order or domestic contract" at the beginning and substituting "If the order, family arbitration award or domestic contract."

The Chair (Mr. Shafiq Qaadri): Thank you. Comments on government motion 62? Those in favour? Those opposed? Government motion 62 is carried.

Shall section 48-

Mr. Peter Kormos: Chair?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Kormos?

Mr. Peter Kormos: I'm voting against this one because I don't believe that it has received the debate and

the investigation that it should. We know that this bill is a little bit of a policy stew, not a coq au vin, but just the sort of thing you throw together with leftovers from the fridge. That's not to suggest that the pension part is a leftover; I'm saying it's been worked on for a long time, but it quite frankly had no business being together in this bill with the child protection stuff. These are two very, very different issues. The pension stuff was the stock, but the child protection stuff was their leftovers in the fridge that were just sort of thrown in here. It's so transparent.

This is important stuff—I don't deny that—and it raises interesting things for us to consider. But here we are: We've had actuaries before us who have raised concerns, and I don't think anybody's suggesting that any of them are lying. We've had plan administrators before us who accept this lock, stock and barrel and won't cede an inch in terms of the argument being made by actuaries. So clearly there's polarization. It came to the point where, "Oh, well, it's an actuary; I know where you're going to stand and the position you're going to take," and, "Oh, it's a plan administrator; I know the position you're going to take."

We've had family lawyers, like Jason Howie, raise concerns about it. We've had the OBA, for all intents and purposes, endorsing it. We've also had some pretty consistent concerns about the extent to which these—and I'm talking about the pension proposals—aren't consistent with the recommendations of—it's not called the Ontario Law Reform Commission anymore; it's the Ontario Law Commission.

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It's frustrating to not have a more intensive dialogue between the advocates and the detractors. It's frustrating not to see them able to respond to each other and answer the questions raised by one party or another.

You know I find the first part of the bill flawed, the child protection stuff. That warranted a stand-alone committee process, and so did the pension stuff. I'm voting against it because I don't think we're ready to vote for it. I think there remains a whole lot of unanswered questions. Again, you don't get that many kicks at the can. These sorts of bills only come forward every so often, and then people have to live with the consequences. Surely there is room for some of the flexibility that Mrs. Elliott tried to get at in terms of choices, yet the pension portion of the bill doesn't seem to provide for that. I'm voting against it. I'm voting against it not because I necessarily condemn all of it as being of no use whatsoever, but because I still have serious concerns about the plan administrator and about the methodology that's going to be prescribed by regulation.

It's just regrettable that we weren't prepared to spend a little more time on this and engage the interested parties more thoroughly: plan administrators, who I have no reason to disbelieve; actuaries, who I have no reason to disbelieve; lawyers like Jason Howie, who's experienced and who raises some very interesting concerns as a practitioner, and he does it in a brilliantly articulate way

with play in language. So I'm going to be asking for a recorded vote.

The Chair (Mr. Shafiq Qaadri): Further comments? Mr. Khalil Ramal: For the record, of course I respect the democratic process, and I know I listened to my colleague opposite speaking about many different issues. I've been in the committee since the beginning, and I listened to many different people. Just for the record, it doesn't matter what issue you raise, whatever issue we talk about, there are going to be people with and some people against. That's why we want to strike a balanced approach in trying to address the issue. It has been addressed very well in this case by many different people, by the ministry staff and by my colleague, the PA for the minister. I think we're satisfied with the result. That's why I'm voting in support, and I hope my colleague will support me in that matter.

The Chair (Mr. Shafiq Qaadri): Are there any further comments?

Mr. Peter Kormos: Mr. Ramal's exhortation to his colleagues may well have tipped the scales and caused any of those doubters amongst the Liberal benches to, indeed, support the bill. The Premier should be thankful to him. Mr. Ramal should be the parliamentary assistant. He demonstrates persuasive skills that Mr. Zimmer, notwithstanding his best efforts—I don't know if it's because of age, because of culture, because of background—just doesn't seem to be able to match.

The Chair (Mr. Shafiq Qaadri): We proceed now to consider the vote on section 48.

Ayes

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

Nays

Elliott, Kormos.

The Chair (Mr. Shafiq Qaadri): I declare section 48, as amended, to have carried.

The committee thanks Mrs. Elliott for withdrawing amendments 63 and 64, as they're out of order, contingent upon anterior amendments. Therefore, will it be the will of the committee to consider sections 49 through 51, inclusive? Those in favour of sections 49 through 51, inclusive? Those opposed? Those sections are carried.

Section 52, government motion 65.

Mr. David Zimmer: I move that subsection 52(2) of the bill be amended by striking out "39" and substituting "38.1."

The Chair (Mr. Shafiq Qaadri): Comments? Those in favour of government motion 65? Those opposed? Government motion 65, carried.

Shall section 52, as amended, carry? Carried.

Shall section 53 carry? Carried.

Shall the title of the bill carry? Carried.

Mr. David Zimmer: Mr. Chair, on a point of order: Earlier in the afternoon—there was a lot of detail here—I

made two slips of the tongue when I was reading in the amendments. Now I know from the clerk that it's the—

The Chair (Mr. Shafiq Qaadri): Mr. Zimmer, before you proceed further, tongue slips will be remedied.

Mr. David Zimmer: I just want to get it on the record. I know that the clerk takes the official transcripts from the written documents that you have in front of you, the written motion, but I just wanted to note on the record that it was with respect to when I was reading motion 29. I read the wrong words from motion 29 when I was reading in motion 30. And on motion 51, I used the expression 2.2 when it should have been 2.1.

The Chair (Mr. Shafiq Qaadri): Thank you. Duly noted and encoded.

Shall Bill 133, as amended, carry? Carried.

Shall I report the bill, as amended, to the House?

Mr. Peter Kormos: One moment.

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Kormos.

Mr. Peter Kormos: I'm going to have to vote against this, because, once again, I'm not sure it's ready to proceed to third reading. This is the committee process. People have shown a great interest. The committee has listened to a whole lot of stuff and worked hard to comprehend some very complex stuff.

We've got 12 of the busiest and most experienced Family Court judges in the province calling upon the committee, calling upon this government, to please not enact what they call "clauses" 6 to 10—sections 6 to 10, the child custody stuff-saying it's unworkable, and pointing out that the real problem is unrepresented people in the Family Court, the real problem is duty counsel who don't do hearings—never mind that; we understand why they don't have time to prepare—but they don't even help people fill out forms. We've got 12 very experienced Family Court judges explaining that they don't want to be investigators, that having to perform an investigative role may—or not may; I think they argue that it does—interfere with their neutrality. They don't want to be inquisitors. That's why they're recommending that the Office of the Children's Lawyer from the Ministry of the Attorney General play a far more active role in child custody cases. Again, an experienced investigator can decide that the matter needs some very speedy investigation or their antennae go up and they go, "Hmm. This may require some criminal records checks. This may require talking to some children's aid authorities. This may require talking to the neighbours, teachers, or a whole bunch of other things." So the judges are saying that one size doesn't fit all.

The government here, in a knee-jerk reaction to the criticism around the court's handling of Katelynn Sampson—and it was the criticism that the government's responding to, almost as if a criminal record check was some sort of panacea. It's not, and the judges are saying so. Read the letter. This is extraordinary. I've never witnessed, in 21 years, judges making a submission to a committee, least of all on matters that directly impact on them, ever. This is extraordinary, that judges would prepare such a lengthy submission and tell this committee

that it's an unworkable non-solution. That's dealing with that part of it.

Quite frankly, the somewhat scripted commentary by but two submitters that the DVPA has proven itself to be unworkable I find rubbish. Nobody has raised that in the course of the number of years as the DVPA was the subject matter of lengthy committee hearings and when advocates across the province supported it. I'd like to know where that came from. Who in the Ministry of the Attorney General told these particular people that it was unworkable? How did they discover, for the life of me, that it was unworkable? I just find that an incredible statement for them to make. It's sad that we didn't hear from other jurisdictions about their experience with similar dedicated DVPA legislation.

The pension stuff—you've heard my comments on that. I really would like for us to be able to resolve in our own minds the concerns being raised about this proposal by lawyers and actuaries and understand why—you know, it's not a matter of saying, "Oh, we're going down the middle and if everybody's mad at us we're doing it just right." It's a matter of doing it right. I just find it so regrettable that this is going to impact on people's lives.

The rich folks, the Peter Nygårds and those people, in their matrimonial litigation have got money coming out of their ying-yangs. There's an error in a pension? They don't have pensions. They've just got huge investments. A couple of million here, a couple of million there don't matter. What you're talking about, though, is people whose pension valuations could consist of \$50,000, \$100,000, or \$150,000, and increasingly so, as we're seeing people lose the pension jobs. You're talking about women or men who have to live—I mean, and Mrs. Elliott knows this, and Mr. Zimmer, certainly, one of the things that judges tell juries when they're asking for the jury to make an award is, "Look. This is the last payday. We've got to get it right. This is the last kick at the can for this person."

We're talking about kids here, because the people who benefit, by and large, from most of these equalization payments are kids. Spouses do too, and there are spouses who separate and divorce long after the kids are on their own, but it's kids. I use that sort of personal injury lawyer line about this being the last payday. This is the last kick at the can that these people get in very acrimonious—and we all know that—circumstances. These people are counting upon us to get it right—people who we'll never meet, who will never meet us; people who we'll never know, who will never know us. It's going to be people who are going to be impacted, I predict, long after any of us are still in this Legislature, because that's how long it'll be before there's yet another kick at the can in terms of family legislation.

I just wish we were prepared to spend a little more time on both elements of the bill, both of the major elements: the child custody and child protection and on the pension plan.

Thank you, Chair. I'll be voting against referring the matter to the House.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos. Are there any further comments or questions? Ms. Elliott?

Mrs. Christine Elliott: I certainly agree that it would be premature for us to be proceeding to third reading on Bill 133 without investigating some of the very serious concerns that have arisen in the course of the debate and in the course of the clause-by-clause review today.

Certainly, the letter that we've received from the Family Court justices is extraordinary. I haven't been here as long as Mr. Kormos, but it seems to me that it is quite unusual to hear directly from justices of the court about how fundamentally unworkable these provisions are; that it not only puts the judges into an untenable position as investigators, but it's also going to further clog up the Family Courts, allow perhaps extraneous information that shouldn't be presented to be presented to the judges and further lengthen the child custody applications that are presently before the courts.

We certainly heard from the family law lawyers about their concerns about the process becoming unduly complicated, and with the lack of extra resources on the part of legal aid assistance for people to be completing these applications, I would submit that we should really ignore the judges' advice to us at our peril. We want to alleviate the process, not further complicate it.

With respect to the repeal of the Domestic Violence Protection Act, I've already put my comments on the record about that. I still don't understand why it needs to be repealed in order to advance the criminalization of breach of restraining orders, which I totally agree with.

Finally, with respect to the division of pension benefits, we've heard some very stark discrepancies in evidence between the actuaries and the plan administrators. I would agree with Mr. Kormos that we need to really fully understand why that is before we proceed with this. In the absence of that, I'm certainly not prepared to advance this bill further. So I will have to vote against it as well.

The Chair (Mr. Shafiq Qaadri): Are there any further questions, comments, queries, concerns?

Recorded vote, final vote of the day. Shall I report the bill, as amended, to the House?

Ayes

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

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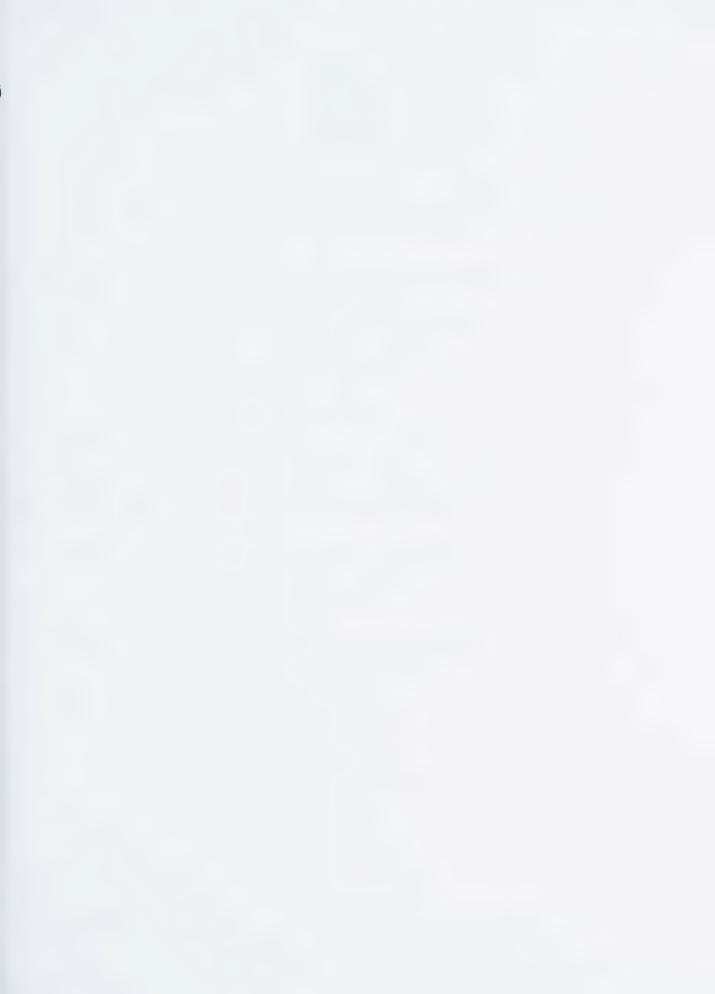
Elliott, Kormos.

The Chair (Mr. Shafiq Qaadri): The bill shall be therefore duly reported to the House.

Is there any further business before this committee?

Just for the committee's notification, we are adjourned until April 20, when we'll consider Bill 152, the Poverty Reduction Act. Committee adjourned.

The committee adjourned at 1701.



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Poverty Reduction Act, 2009

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Première session, 39^e législature

Journal des débats (Hansard)

Lundi 20 avril 2009

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Loi de 2009 sur la réduction de la pauvreté

Chair: Shafiq Qaadri Clerk: Katch Koch Président : Shafiq Qaadri Greffier : Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Monday 20 April 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Lundi 20 avril 2009

The committee met at 1402 in committee room 1.

SUBCOMMITTEE REPORT

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen colleagues, I welcome you to the Standing Committee on Social Policy. As you know, we're here to review Bill 152, An Act respecting a long-term strategy to reduce poverty in Ontario.

Before beginning with our presenters, I will invite one of the government members to enter the subcommittee report. Mrs. Van Bommel?

Mrs. Maria Van Bommel: Your subcommittee on committee business met on Monday, March 30, 2009, to consider the method of proceeding on Bill 152, An Act respecting a long-term strategy to reduce poverty in Ontario, and recommends the following:

- (1) That the committee meet for the purpose of holding public hearings on Monday, April 20 and Tuesday, April 21, 2009, in Toronto.
- (2) That the clerk of the committee, with the authority of the Chair, place an advertisement for one day about the public hearings in the Toronto Star and l'Express newspapers.
- (3) The clerk of the committee post information regarding the hearings on the Ontario parliamentary channel and the Legislative Assembly website.
- (4) That interested people who wish to be considered to make an oral presentation on Bill 152 should contact the clerk of the committee by Thursday, April 16, 2009, at noon.
- (5) That the clerk of the committee provide a list of all interested presenters to the subcommittee following the deadline for requests.
- (6) That the deadline for written submissions be Tuesday, April 21, 2009, at 5 p.m.
- (7) That the research officer provide a backgrounder on poverty prior to the start of public hearings.
- (8) That the deadline for filing amendments to the bill with the clerk of the committee be Thursday, April 23, 2009, at 12 noon.
- (9) That clause-by-clause consideration of the bill be scheduled for Monday, April 27, 2009.
- (10) That the clerk of the committee, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any

preliminary arrangements to facilitate the committee's proceedings.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Van Bommel. Are there any questions before we adopt the subcommittee report, as read? Mr. Prue?

Mr. Michael Prue: Yes. It's not a question, but it is a comment. I just want it for the record because the subcommittee is not, of course, transcribed. I continue today to be disappointed that we're only setting aside a maximum of six hours to hear from delegations, from people coming forward. We have had, as I understand, 41 deputants seeking to depute and we're only able to take 24. We're not allowed to travel. We're not hearing anyone outside of the confines of this building and of Toronto. It seems to me that a bill of this magnitude, and the pride with which the minister constantly stands in the House and talks about it, ought to be much more readily accessible to the people of Ontario.

I don't know whether it's in order to make a motion, but if it is, I would like to make a motion that we schedule at least another full day of hearings to accommodate the 17 or so people who have not been allowed to be heard.

The Chair (Mr. Shafiq Qaadri): There's a motion on the floor to amend the subcommittee report. Do I have consent for that amendment? No, consent is denied.

Those in favour of this motion? Those opposed? The motion—

Mr. Michael Prue: To the motion? On the subcommittee motion?

The Chair (Mr. Shafiq Qaadri): Those in favour of the subcommittee motion to amend, as Mr. Prue has suggested?

Mr. Michael Prue: I thought there wasn't—*Interjection*.

Mr. Michael Prue: It's not consent. Then we don't vote for it.

The Clerk of the Committee (Mr. Katch Koch): It's a motion to amend the subcommittee report by adding extra days.

Mr. Michael Prue:. So that's the amendment before

The Clerk of the Committee (Mr. Katch Koch): That's the motion, yes.

Mr. Michael Prue: Okay. Thank you. Sorry, I was a little bit confused since there was no unanimous consent,

but there is a motion notwithstanding the fact there's no unanimous consent. Okay. Thank you.

The Chair (Mr. Shafiq Qaadri): So we're going to dispense with that particular issue and I would now move to—

Mr. Michael Prue: No, no.

Interjection.

The Chair (Mr. Shafiq Qaadri): Fine. Could you repeat your motion for me, then?

Mr. Michael Prue: My motion is to amend the subcommittee report to have another full day of hearings in order to accommodate the 17 groups and individuals who have not been allowed to make deputations.

The Chair (Mr. Shafiq Qaadri): Thank you. You've heard the formal motion on the floor suggested by Mr. Prue

Mr. Michael Prue: On a recorded vote, please.

The Chair (Mr. Shafiq Qaadri): I would therefore ask for a recorded vote.

Ayes

Munro, Prue.

Navs

Brownell, Dhillon, Sousa, Van Bommel.

The Chair (Mr. Shafiq Qaadri): I declare that particular motion lost. Are there any further comments on the subcommittee report?

Seeing none, we'll proceed to the first presenter. I welcome—

Interjection.

The Chair (Mr. Shafiq Qaadri): All those in favour of the subcommittee report as read? Those opposed? Subcommittee report carried.

POVERTY REDUCTION ACT, 2009 LOI DE 2009 SUR LA RÉDUCTION DE LA PAUVRETÉ

Consideration of Bill 152, An Act respecting a longterm strategy to reduce poverty in Ontario / Projet de loi 152, Loi concernant une stratégie à long terme de réduction de la pauvreté en Ontario.

ONTARIO CAMPAIGN 2000 FAMILY SERVICE TORONTO

The Chair (Mr. Shafiq Qaadri): We will now proceed to the first presenter, Ms. Jacquie Maund, coordinator of Ontario Campaign 2000. Ms. Maund, you have 15 minutes in which to make your presentation. Any time remaining will be evenly distributed amongst the parties, and I invite you to begin now.

Ms. Jacquie Maund: Good afternoon, everyone. My name is Jacquie Maund. I work as the coordinator of Ontario Campaign 2000, which is a 66-partner coalition

of organizations across the province committed to working together to end child and family poverty in Ontario. Our coalition is based at a community agency called Family Service Toronto, which has been serving vulnerable and marginalized people in the Toronto area for 95 years.

Quickly, the name Campaign 2000 dates from the 1989 unanimous House of Commons resolution to end child poverty in Canada by the year 2000.

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We're pleased that the government has introduced Bill 152, An Act respecting a long-term strategy to reduce poverty in Ontario. We see this as an indication of the government's commitment to make progress on the stated goals of poverty reduction as reflected in the Breaking the Cycle document released last December. We believe that this bill takes an important step in seeking to ensure that poverty reduction is made a permanent part of government business and that all future Ontario governments must have in place a poverty reduction strategy with specific targets and initiatives for achieving them.

Ontario Campaign 2000 believes that all people in Ontario must have maximum opportunity to reach their full potential. So we would like to propose a number of amendments, 11 amendments, that we feel would strengthen Bill 152 and hold the present and future governments to account for developing and implementing an effective poverty reduction strategy, based on inde-

pendent review and public input.

I'm going to now go through the 11 amendments that we would like to propose to strengthen and enhance this bill.

We believe that the ultimate goal of a poverty reduction strategy should indeed be to eliminate poverty. So we would like to see the preamble to this bill reflect those words, reflect that the vision is of a poverty-free province.

Similarly, we believe that in this framework legislation, it should reflect the long-term goal of "poverty free." For example, in section 2(1) of the bill, we suggest that it be amended to read—and I'll just summarize: The government of Ontario shall maintain the long-term poverty reduction strategy set out in Breaking the Cycle ... published on December 4, 2008, or another long-term poverty reduction strategy that is guided by the vision of a poverty-free province where every person has the opportunity to achieve his or her full potential and contribute to and participate in a prosperous and healthy Ontario."

So those are two areas where we would like to see the words "poverty free" enshrined both in the preamble and in the legislation.

Our third comments relates to the principles that are outlined in the bill. We like these principles; we want to add to them a little, but we would also like to see that these principles guide both the development of every poverty reduction strategy and also all of Ontario's laws, policies and practices.

We have some wording that we suggest for section 2(2) that ensures that the "principles, and Ontario's laws,

policies and practices will be consistent with the same principles...."

Fourthly, continuing on the subject of the principles, we note that the bill does not reference adults living in poverty. It talks about families, children and communities, but it doesn't reference single adults. So we would like to see principle number 7 amended to reflect that. Our suggested wording for section 2(2)7 is, "That a sustained commitment to work together to develop strong and healthy children, adults, families and communities"—that that be added.

We'd also like to add an eighth principle that refers to human rights as a principle in reducing poverty. Specifically, we suggest that an eighth principle be added to the list and it be called "Equitable life chances and equality rights," and that it read: "Strengthening Ontario's human rights laws and the enforcement system is essential to the reduction of poverty."

Our sixth amendment relates to the poverty indicators that are outlined to be included in the strategy. We would like to see a greater description of poverty indicators that makes them more robust for future governments. So our suggested wording, for section 2(3)3, is: "Indicators that are linked to the determinants of poverty, including but not limited to income, education, health, housing and standard of living, to measure the success of the strategy"—so a bit more fleshing out of what those very crucial poverty indicators are on which the strategy will be measured and tested.

Moving now to the seventh amendment, we'd like to make a comment on the target of future poverty reduction strategies. We believe that each time the new poverty reduction strategy is developed, the target should indeed reflect the aim of a poverty-free Ontario. So it should be making substantive progress toward that target. Our suggestion, then, for section 3, which talks about the target, is that a clause be added so that it reads: "The target shall represent a substantive reduction in poverty within the next five years."

Our eighth suggestion relates to the annual report on poverty reduction. We're suggesting that it should not just be posted on the website, as currently appears in the bill, but that it should be tabled in the Legislature within 60 days of completion in order to ensure public debate, public discussion and public awareness of the very important annual report on how we're doing in achieving the goals of poverty reduction set out in the strategy.

Our ninth suggestion for an amendment is around the review of the poverty reduction strategy. We would like to see an independent review of the poverty reduction strategy happen at least every five years—not the minister doing the review, but an independent body that would be appointed by the Legislature. This follows on some of our research as to what happens in the European Union, where independent experts conduct peer reviews of each country's national action plan for poverty reduction and social inclusion.

We would also like to see some more firm timelines around the review of the poverty reduction strategy and the tabling of that review in the Legislature. I'm just going to read out those suggested amendments to section 6(1): "At least every five years, the appointed independent body shall review the long-term poverty reduction strategy then in effect."

These are new:

"(a) The review shall begin within four years of the issuing of the poverty reduction strategy in the Legislature.

"(b) The review shall take no longer than six months.

"(c) The report of the review shall be tabled in the Legislature within two months of the completion of the review"—so some tightening up of who does the review, the timelines around doing that review and the tabling of that in the Legislature, again, to engender public discussion of this very important review.

Our 10th suggested amendment is that the independent body doing that review consult with the public, in particular, low-income people.

Our 11th suggested amendment is to ensure that the new poverty reduction strategy that is developed be based on the findings of that independent review and be tabled in a timely fashion. We're suggesting within four months of the tabling of the review of the report.

Those are our suggested amendments. We believe that this bill is historic. It's the first time that the Ontario government has introduced legislation that turns political promises on poverty reduction into provincial law, but we urge the Standing Committee on Social Policy to recommend these changes, which we believe strengthen it, to ensure that this and future Ontario governments develop and implement effective strategies that do indeed move us towards a poverty-free Ontario.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Maund. We'll move to questions, now that we have our procedural matters in hand. We have about 90 seconds per side, beginning with Ms. Munro.

Mrs. Julia Munro: Thank you for being here today. I want to just ask you to comment a little bit on the question of your recommendations nine and 10, and the question, then, of the independent review. How would you envisage that? What would it look like, that independent review? I appreciate the steps by which it is made public; I just want you to talk about the review itself.

Ms. Jacquie Maund: We're suggesting that someone be appointed, possibly an officer of the Legislature, who would conduct the review, clearly in consultation with interested stakeholders. He or she would require some funding to do that, to hold consultations, and we would like to see those be held around the province, not only in Toronto, so that people have an opportunity to provide comment, to provide input and then, of course, that there be a timeline around that review and that the document be public and then be tabled in the Legislature for public discussion.

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Mrs. Julia Munro: Do I have another question? *Interjection*.

Mrs. Julia Munro: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Munro. Mr. Prue?

Mr. Michael Prue: My question relates to the government's bill. I have said many times in the House, and I'd just like your comment, that I'm not satisfied that a government bill that deals only with child poverty is going to effectively change poverty in Ontario, particularly since 85% of all people on ODSP have no children. They will be forever neglected under this bill. You said something similar to that yesterday, and you've added the inclusion of other people: the disabled, First Nations communities, new immigrants. What does this bill need in order that it is inclusive of all people?

Ms. Jacquie Maund: We've suggested upfront that it state clearly that we're seeking a poverty-free Ontario, which implies poverty-free for everyone. We've also called for the specific addition of the word "adults" so that it applies not just to children and families and communities but to adults. By referencing the Human Rights Code, we're suggesting that reflects the fact that poverty affects different groups in different ways and that particular groups are at a higher risk of poverty. By strengthening its connection to the Human Rights Code, that also moves it further in terms of a broader application.

Mr. Michael Prue: In the absence of your-

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Prue. I'll now offer it to the government side. Mrs. Van Bommel?

Mrs. Maria Van Bommel: On number 11, your recommendation is that the future strategies would be based on the findings of the independent review. Are you concerned at all that if it's geared strictly to that independent review that it limits the ability of the government to maybe look at other possibilities or take into account information or economic situations they may see on the horizon or any of these kinds of things?

Ms. Jacquie Maund: Sure. I think what we're saying is that the independent review hopefully will provide information as to where some of the strengths of the strategy were, where some of the weaknesses were, so it will provide information to inform the next poverty reduction strategy with a view to ensuring that it addresses any weaknesses that may have happened in the previous period. For example, in the United Kingdom, modifications have been made as they realize that they really need to address the question of working poor. It's developing a body of knowledge through the independent review and using that to inform the development of the next strategy.

Mrs. Maria Van Bommel: But you're saying, basically, that such an important decision shouldn't just rest with the independent review but should be a collaboration of government and independent review and multiple parties and consultations and—

Ms. Jacquie Maund: Yes, and whatever other information becomes pertinent.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Van Bommel, and thanks to you as well, Ms. Maund, for your presentation and written deputation on behalf of Family Service Toronto and Ontario Campaign 2000.

CHIEFS OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I now move directly to our next presenter, Grand Chief Randall Phillips, who holds the social services portfolio for the Chiefs of Ontario. Welcome, Chief Phillips. As you see in the protocol, you have 15 minutes in which to make your presentation. The clerk will be pleased to distribute that for you. Please be seated and please begin now.

Grand Chief Randall Phillips: Good afternoon, everybody. How are you? [Remarks in Oneida.] My name is Randall Phillips and I'm currently the elected Grand Chief of the Association of Iroquois and Allied Indians. I introduced myself in my native language of Oneida. It's a tradition in our culture that we introduce ourselves first before we speak in any assembly. So it's just in recognition of my own culture to do that. Thank you very much.

Since we're not on film, I'll feel free to take my glasses off so I can read my text.

My name is Randall Phillips. I am currently the Grand Chief of the Association of Iroquois and Allied Indians and I hold the social services portfolio for the Ontario First Nations.

The status Indian population of Ontario First Nations is the largest of any province in Canada. The Chiefs of Ontario is a secretariat which acts on behalf of the 133 First Nations communities and it bases its decisions on resolutions passed at general and special chiefs assemblies.

I would like to acknowledge this opportunity to make a presentation to this committee on the all-important topic of poverty reduction in general and Bill 152 in particular on behalf of First Nations communities.

Breaking the Cycle: Ontario's Poverty Reduction Strategy explicitly outlines that aboriginal people are one of their key groups to help regarding poverty. The section relating to aboriginal populations in Ontario, however, focuses more so on off-reserve individuals. Even if you look at the report, there are two paragraphs that are designated specifically to aboriginal people in that report.

Due to this, questions will arise of how those living within their First Nations communities will be assisted by the Ontario government's strategy of reducing poverty.

The document explicitly outlines 10 core principles that are the major targets of this strategy. It is within the "Diversity" section that aboriginal people are outlined as a major ethnic group that will benefit from this strategy. This section, however, seems to do little to address the major poverty issues affecting those living within their First Nations communities and focuses heavily on individuals living off-reserve.

For all aboriginal people, and particularly those living in First Nations communities, the percentage who have not earned a certificate, diploma or a degree is well above the non-aboriginal norm. For example, in the Sandy Lake First Nation, a remote fly-in community in northwestern Ontario, 69% of the population aged 15 and older do not have a high school certificate, diploma or degree. The

major initiatives being put forth under the "Diversity" section for aboriginal peoples includes urban aboriginal education pilot projects, Ontario aboriginal community justice programs, a community recreation activator pilot program and the Chiefs of Ontario First Nations public health project.

My purpose today is to outline procedural and substantive concerns that First Nations have with Bill 152 and the lack of First Nations inclusion in the development of Ontario's Poverty Reduction Strategy.

First Nations' rates of poverty exceed that of Ontario's general population and attention is greatly needed in the same target areas that this strategy plans on addressing. The social and economic indicators for First Nations citizens are far below the Ontario and Canadian average. These are outlined in the report of the Royal Commission on Aboriginal Peoples and many other authoritative reports and studies, such as the 2008 Auditor General's report. First Nations experience the highest unemployment rates in this country and have few economic opportunities on reserve, compounded by underresourced programs and services.

The provincial government plans on investing approximately \$2.9 billion over the next five years in order to fully implement this strategy. The strategy, however, does not identify how on-reserve First Nations communities will be helped by these new programs or services created. This sends a very worrisome signal to the system that First Nations' issues and concerns have somewhat dropped in importance as no investments are directed at First Nations communities within the area of Ontario.

First Nations could seek other areas within the poverty reduction strategy to help those living within their communities, such as through sections related to children and their families, women and the elderly. Statistics show that First Nations children on-reserve are disadvantaged due to many of these areas that were just mentioned, and thus their education is heavily affected.

The focus on helping communities is also a possible avenue for obtaining more assistance for First Nations as it is outlined that helping the community the child lives in will help that child succeed. Under the "Diversity" section, also known as "key groups," the sections related to women and people with disabilities are also possible avenues that could be used to address poverty within First Nations communities. The core principle relating to co-operation should also be considered as an avenue to pursue within the poverty strategy, especially in relation to the lack of strategy to help First Nation communities directly.

Through the poverty reduction strategy, enhancements can be included that will provide First Nations with the opportunity to embark on a new relationship with Ontario, one designed for the betterment of all who live within the region.

One of the most offensive statements is the government's reference to the fact that First Nations receive gaming revenue that can be utilized for poverty reduc-

tion. This seems to be a clear statement by the province that First Nations should utilize these resources for community programming instead of being included in provincial gaming programs or within the wider scope of the poverty reduction strategy.

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In 2005, there were 24 completed suicides within the Nishnawbe Aski Nation territory, one of the highest rates in Canada.

Poverty is the lead cause of child welfare interventions. Among seven First Nations communities in Ontario, the total First Nations population is 6,179. The Children's Aid Society of London and Middlesex is one of three CASs primarily responsible for serving these communities. We're talking about southwestern Ontario. Among these three CASs are Sarnia-Lambton, Chatham-Kent and London and Middlesex. Almost 5% of the First Nations population for these First Nations is represented as an open protection case. In 2001, First Nations children served at the CAS of London and Middlesex represented 14.1% of the total in-care population. That's too many people.

Section 15 of the Charter of Rights prohibits unequal treatment under the law based on various grounds, including race. This means that the province must provide equal treatment to First Nations, regardless of the level of federal funding. Based on everyday experience, First Nations on-reserve believe that they are not receiving the same level of services as available off-reserve. It is a second-class system based on racial categorization. This makes the system vulnerable to an equality challenge under section 15.

In these circumstances, there should be due consideration for amendments on behalf of First Nations in Ontario to pass Bill 152. The Bill 152 process should permit careful consideration of the concerns of First Nations onreserve, including a fundamental concern with unequal treatment. First Nations and Ontario should discuss positive and forward-looking amendments designed to strengthen the system as it relates to First Nations communities. This would be in the best interests of Ontario and would diminish the risk of a broad-based section 15 challenge to the legislation.

In summary, the best course is that the Bill 152 package should permit meaningful consultations with First Nations communities on-reserve to help counteract poverty. If the consultations were conducted in good faith, the inevitable result would be better legislation and a program package for First Nations and Ontario. This would be in the best interests of all and would bring forth a better relationship and understanding.

"The government's poverty reduction strategy is guided by the vision of a province where every person has the opportunity to achieve his or her full potential": While Ontario First Nations fully support and agree with this important legislation, which commits current and future governments to adhere to a poverty reduction strategy, our communities and children must have an equal opportunity to grow up in safe and healthy environments with their families, in their communities and in

their culture. No First Nations child should be taken from their family because of the family's inability to provide them with the basic necessities of life. Your support and partnership to include on-reserve First Nations communities in this strategy is essential so that we can address the devastating effects of poverty on our communities, including on their health and development.

That is my presentation. Thank you. I'll be happy to

try and answer questions that you might have.

The Chair (Mr. Shafiq Qaadri): Thank you, Chief Phillips. We have about 90 seconds per side, beginning with Mr. Prue.

Mr. Michael Prue: I asked the question of the last deputant and I'll ask you specifically about First Nations communities. You've been completely left out of the poverty reduction strategy. How would you propose, first of all, that children living on-reserve be included in this strategy, and secondly, is it important to include all First Nations people, no matter where they live, as being a group that is specially deserving of getting out of poverty?

Grand Chief Randall Phillips: I'll try to be really brief. With respect to the on- and off-reserve programs, there's been a long discussion with respect to access to services. For our community members who live off-reserve within any urban centres, they have a better chance and better access to those services. What we're talking about now is completely devoid in terms of First Nations communities. Within that, we have a large percentage of people who are currently on social assistance who wouldn't receive any assistance at all because of the other restrictions and rules. So there has to be a separate approach with respect to including First Nations communities directly.

We talk about a rule in terms of consultation of programs affecting us. Currently in Ontario, there's a cost-sharing program called the 1965 welfare agreement. Within that agreement, it calls for any program changes to have the consent of First Nations communities before those changes go through. We think this is a significant change and an impact on that particular agreement, and we should have been advised and consulted accordingly, sir.

The Chair (Mr. Shafiq Qaadri): Thanks for your precision-timed remarks, Chief Phillips. We'll now move to the Liberal side. Mrs. Van Bommel.

Mrs. Maria Van Bommel: Thank you, and welcome, Chief Phillips.

Grand Chief Randall Phillips: Thank you.

Mrs. Maria Van Bommel: Certainly, in your presentation here, you say that the concerns, and the need for aboriginal communities to be addressed—you do say that they are, but your concern is more about the off-reserve versus the on-reserve consultations. This bill is about the future of poverty strategies within the province and it basically sets up a mandate for future governments to always develop a strategy and address it at least every five years.

Am I to understand that your concern would be that you want to see as much consultation with on-reserve as

you might feel was done with off-reserve? You feel that there wasn't the consultation done on-reserve that should have been and you want to make sure that happens in future?

Grand Chief Randall Phillips: I would suggest both, Mr. Chair; both things have occurred. There seems to be an easy path for organizations that represent First Nations people within urban centres to get access to government people or programs and services and things like this. What we're talking about here is the duty to consult, and the duty to consult rests with the government and includes First Nations communities. There was a total absence of that. Although there might have been some comments—

The Chair (Mr. Shafiq Qaadri): I'll need to intervene there, Mr. Phillips. To Mrs. Munro, please.

Mrs. Julia Munro: Thank you, and maybe I can give you the chance to finish the sentence there, because my concern was the discrepancy that you had outlined earlier here between on- and off-reserve. Perhaps you could just finish what you were explaining to us.

Grand Chief Randall Phillips: Yes, ma'am, thank you.

There was no concerted effort with respect to addressing any of this strategy, any of these discussions in terms of how it was going to deal with and potentially impact and benefit First Nations communities. That's what we've been saying for many, many years, that within our First Nations governance structures, we have an idea and a sense in terms of how to address these issues, how to look at them and how to really deal with them in a serious way to benefit our people. But it's an example like this where we've just been totally ignored with respect to how does the strategy move forward and how we are included.

So, yes, it is an insult with respect to First Nations communities. It is my task as the chair of the chiefs committee on social and child welfare to address these matters with people like yourself who make these decisions. There is an impact with us. We're trying to say that we need to be involved. We're trying to say that we can form solutions and work together on this. That has not occurred, and I think that's the message that I'm trying to bring here right now: Without our inclusion, there are going to be some serious challenges with respect to how we move this bill forward and some serious challenges with respect to the intent of the bill.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Munro, and thanks to you, Grand Chief Phillips, for your presentation and written deputation.

Grand Chief Randall Phillips: Thank you, Mr. Chair.

ASSOCIATION OF ONTARIO HEALTH CENTRES / ASSOCIATION DES CENTRES DE SANTÉ DE L'ONTARIO

The Chair (Mr. Shafiq Qaadri): I will now respectfully call our next presenter, Ms. McKenna, manager of

policy and government relations for the Association of Ontario Health Centres.

You've seen the protocol, Ms. McKenna. You have 15 minutes in which to make your presentation. I invite you to begin now.

Ms. Lee McKenna: Good afternoon. Thank you for this opportunity to address this important topic.

The Association of Ontario Health Centres is a member of the 25 in 5: Network for Poverty Reduction, a multi-sectoral organization comprised of more than 457 provincial and Toronto-based organizations and over 1,000 individuals working on eliminating poverty. For that reason, I will attempt not to repeat much of what you'll be hearing from my 25 in 5 colleagues.

L'ACSO est l'association provinciale représentant les centres de santé communautaire et les centres autochtones d'accès aux soins de santé de la province. Nos centres ont pour mandat de servir les Ontariens et les Ontariennes confrontés à des obstacles à l'accès aux soins de santé et sont financés à cette fin.

Nos fournisseurs travaillent selon une approche globale axée sur les déterminants sociaux de la santé. Travaillant à l'intersection de la pauvreté et de la santé, ils voient chaque jour l'incidence du faible revenu, et de tous les déterminants sociaux qui contribuent à la pauvreté, y compris le logement, le statut, l'éducation, la sécurité alimentaire, l'emploi, l'inclusion sociale, la justice sociale, l'équité et la paix, sur la santé des plus vulnérables.

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Comme nous le montre notre travail au quotidien, la pauvreté n'a pas à être un état permanent. Nos centres font une différence, et grâce à la stratégie du gouvernement et à ses nouvelles dispositions législatives, nous pourrons en faire davantage.

AOHC welcomes the introduction of Bill 152 because it presents an historic watershed in this province: recognizing in legislation, for the first time, the principle that public policy is a tool—perhaps, we might say, the key tool—in reducing and eliminating poverty in this province. If this is so, then public policy has also, in the past, been a tool of poverty creation. Bill 152 represents an important moment for government and non-governmental organizations to work in partnership for a common goal that will now be enshrined in legislation.

We recognize the essential limitations of legislation. Our legislative history is replete with examples of legislation that has been ignored, contradicted or set aside, excused as unenforceable. We recognize the danger of Bill 152 facing a similar fate—a piece of laudable rhetoric; an expression of hopes, but not intentions—which is why we are here today: to make sure that does not happen. We will be taking our role in this partnership very seriously, and we look forward to the government doing the same.

For too long, Ontarians saw annual increases in our health care budget, even as social services and supports of all kinds were being decimated around us, creating poor people, poor families, and thus sick people, families and communities. If we are to ever see Tommy Douglas's second stage of medicare that keeps people well in the first place, rather than just patching them up when they're sick, poverty must be our priority. A poverty-free Ontario will be a healthy Ontario.

In the months leading up to and since the release of the government's poverty reduction strategy, Minister Matthews and other members of the all-cabinet committee have echoed what you have been hearing from us for years: Poverty is a blight on the landscape of this wealthy province and something can and should be done about it. It is the right investment, the best investment; an economic downturn makes it even more so. We are not here to reiterate those principles and the evidence that supports them, but to put forward specific proposals to strengthen Bill 152 so that our shared intentions for equity, inclusion, transparency and accountability are embedded in the legislation.

Though we have indicated our discontent with the limitations of these hearings, your work will benefit from the fact that in hearing from a few of us, you are hearing from many of us. You will hear echoes and reaffirmations of a dozen or so recommendations for changes to the legislation. Know that these recommendations result from many hours and days of consultations with legal and legislative experts, as well as with those whose expertise arises out of the lived experience of poverty, represented by and manifested in the work of hundreds of organizations who touch and are touched by Ontarians living in poverty every day. All of these words are grounded in the hopes and dreams of our neighbours.

A strengthened Bill 152 would lift its vision from mere reduction to at least match that of Newfoundland and Labrador and Quebec, whose counterpart strategies are about elimination in the case of the former, and poverty-free in the case of Quebec. In so doing, we join worldwide movements that call us to make poverty history or to end poverty now. Other jurisdictions beyond our borders have also committed to plans that contemplate a society without poverty and its inherent obstacles to economic, social and human dignity and development.

While the poverty reduction strategy speaks to the importance of measuring progress with specific indicators, and Bill 152 refers to targets, the legislation currently lacks the teeth necessary to ensure that those targets are sufficiently substantive.

Poor children, as we know, live in poor families. While one might recognize the need to start somewhere, the exclusion of adults from the government's poverty reduction strategy assumes that children and their adult caregivers living in poverty can somehow be separated out. The focus on children also plays into the ancient divisions between the deserving and the undeserving poor. Support for children enables a skirting of a difficult discussion about a lingering discrimination. An inclusion of adults in the larger vision of poverty reduction and in this legislation is necessary.

A vision of a poverty-free Ontario is untenable without an intentional and ongoing interministerial collaboration that views all new initiatives, policy and legislative, through the lens of poverty reduction. The all-cabinet committee would do well to institutionalize itself as a mechanism for dismantling silos across ministries so that poverty eradication is not isolated in a corner of the government's work but is being informed and shaped at every step.

The poverty reduction lens is essentially one of equity, equality and fairness, and thus draws us into a discussion of rights, those rights that are ours as articulated in the United Nations International Covenant on Economic, Social and Cultural Rights and reaffirmed in this province's Human Rights Code. Times of economic crisis must not be used to deny rights that belong to all of us by virtue of our shared humanity.

Accountability is key to our common goal to reduce and eliminate poverty in this province. Reporting must be regular, its processes transparent and accessible. Consultation must be real so that your partners in this project, people living in poverty and organizations who are their voices, can see that their input has been taken seriously. This means reporting that is timely. It also means review and mechanisms of evaluation that are meaningful across the social determinants of health. Indicators must include income, education, health, housing and standard of living, amongst others, if we are to get an accurate measurement of success, or not. Evaluation must also be timely, independent and thorough. AOHC recommends that the work of the Provincial Auditor be expanded to include an exhaustive five-year review of the strategy then in effect.

In conclusion, the Association of Ontario Health Centres, as part of the 25 in 5: Network for Poverty Reduction, believes the amendments we have suggested would make Bill 152 a more effective instrument in our shared effort to ensure that poverty reduction to the point of eradication remains the most important and best-scrutinized task and service of government for the benefit of all Ontarians. Thank you.

Le Président (M. Shafiq Qaadri): Merci, madame McKenna, pour vos remarques. Nous commençons avec les questions du gouvernement; seulement une minute, s'il vous plaît. We have about a minute per side, beginning with Mrs. Van Bommel.

Mrs. Maria Van Bommel: Thank you very much, and thank you for your presentation here as well. On the second page of your presentation you talk about strengthening the bill to at least match the Newfoundland and Quebec models, but my understanding, at least of the Quebec act, is that it really sets out guidelines for a strategy and it's very short-term legislation. This particular piece of legislation is intended to create a requirement or a mandate of future governments to always address the issue of poverty, so I'm kind of confused by why you would compare the two.

Ms. Lee McKenna: On this particular point, it's very specifically about the vision of the Quebec initiative. There's no doubt there are some real distinctives in the initiatives, the strategies that they contemplate and the

areas that they prioritize. But it's about the language, so across our coalition we've agreed that lifting the vision up beyond reduction to talk about total freedom of poverty is what we're trying to get at at that point.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Van Bommel. Mrs. Munro.

Mrs. Julia Munro: I'd like to go to the point you made on page 4 with regard to the annual reporting and the question of accountability. I'm assuming that you would be looking for a public process to create that level of accountability?

Ms. Lee McKenna: Yes.

Mrs. Julia Munro: Because it doesn't exist in the current piece.

Ms. Lee McKenna: That's right. You'll see our recommendation there. I haven't gone through and read out all of the recommendations that are there, but what we are looking for is a consultation process that is public, that is, as I say, real, where all of us are participating in it, where participation is funded and where these consultations are also taking place in various parts across the province.

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Mrs. Julia Munro: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Munro. Mr. Prue.

Mr. Michael Prue: How do you see the review panel being set up? Today's Toronto Star suggested that it's not good enough that the Liberals simply appoint people they want to hear from in the review. How do you suggest it be set up?

Ms. Lee McKenna: We would certainly like to see a review panel that goes beyond simply an appointment by the government but rather an appointment that brings in stakeholders to actually bring their own appointees to the review panels, so that right from the beginning, there's a sense of independence of the review and not simply those who have been appointed by the government.

Mr. Michael Prue: Who would choose them? Who would choose the initial set?

Ms. Lee McKenna: Well, I guess my bias is, as part of the 25 in 5 coalition of 457 organizations, that we would be invited to nominate from within our ranks those who would be best suited to participate in that review.

Mr. Michael Prue: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Prue. Je vous remercie, madame McKenna, pour votre présentation et députation.

HAMILTON ROUNDTABLE FOR POVERTY REDUCTION

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters, Ms. Weaver and Mr. Cooper of the Hamilton Roundtable for Poverty Reduction. Welcome, and please be seated. As you've seen the protocol, you'll have 15 minutes in which to make your presentation. You might just introduce yourselves as you're speaking

for the purposes of Hansard recording the permanent record, and I invite you to please begin now.

Ms. Liz Weaver: Good afternoon, ladies and gentlemen. My name is Liz Weaver and I'm the director of the Hamilton Roundtable for Poverty Reduction. I've brought my colleague Tom Cooper and two of our citizen members of our roundtable, Sandy Leyland and Bill Mederos. We're circulating a package with our response to Bill 152. I'll speak partially to our response and ask Tom to also respond.

The Hamilton Roundtable for Poverty Reduction was born out of concern for our community's high poverty challenge. It came together in May 2005 to understand Hamilton's high poverty levels, to focus the community's attention on poverty and to begin to find solutions.

The table is a collaborative table of 42 members representing four sectors in our community: business, government, the voluntary sector and people who have the lived experience of poverty. We have the aspiration of making Hamilton the best place to raise a child, and the framework for change is based on five critical points of investment in the lives of children, youth and their families.

On Friday, our social planning and research council released its incomes and poverty report. The data and analysis from this report, based on 2006 census information, shows both signs of hope and signs of concern for Hamilton's fight against poverty. While the overall poverty rate in our community has dropped a couple of percentage points, we still recognize that 89,000 citizens in our community live below the low-income cut-off. That's enough to span the Skyway Bridge 10 times. If you know anything about the geography of Hamilton, the Skyway Bridge is a pretty prominent thing in our community and we could span that bridge 10 times with the number of individuals who live in poverty in our community.

In response to Bill 152, participation of thousands of Ontarians in community consultations around the collaborative tables indicates that there's been significant support for the Ontario poverty strategy. We believe that government plays a critical role in poverty reduction and alleviation. This role includes reforming the rules which keep individuals and families living in poverty, investing in the lives of children and their families, and investing in communities. Difficult economic circumstances impact the most vulnerable and marginalized more severely, and leadership and investment is a critical support and lifeline to 1.8 million Ontarians who find themselves below the poverty line.

We certainly commend the government of Ontario for bringing forward Bill 152. This is the first time in this province that a legislative initiative seeks to enshrine the need to reduce poverty in the province. The government of Ontario has taken a bold step in creating an interministerial working committee focused on developing the poverty reduction strategy. We would recommend, as the previous speaker did, that this process be entrenched in Bill 152 to ensure that future governments will continue

this collaborative, cross-ministerial response to the complex issue of poverty. We know that poverty doesn't sit in one ministry. In fact, it crosses many ministries, whether it's education, housing, economic development or the Ministry of Community and Social Services. We believe that this is a way to enliven this legislation.

We also commend the government of Ontario for its declaration of principles which guide the legislation, including the importance of all Ontarians, the importance of communities, the recognition of diversity, the importance of support and involvement of families, respect, involvement, commitment and co-operation. We find these principles to breathe life not only into the Ontario poverty reduction strategy, but also into this legislation.

The Hamilton Roundtable for Poverty Reduction also believes that the issue of poverty requires that everybody is involved in identifying solutions. We believe that government has an important role to play, but citizens have an equally important role to play, as do communities, in developing responses to the complex problem of poverty. We would note, however, that this process which you've undertaken for these public hearings on this bill was a bit restrictive to those individuals who will be most impacted by the legislation—people living with low and limited income.

Specific poverty reduction targets: The Hamilton Roundtable for Poverty Reduction believes that the most important target to consider is the elimination of poverty for all citizens and recommends that the goal be a poverty-free Ontario and that that goal be enshrined in the legislation. However, we recognize that the interim targets can be a positive factor in evaluating the success of reducing poverty. The provincial government's current five-year target to reduce child poverty by 25% aligns with the Hamilton Roundtable's focus around investing in critical points of investment in the lives of children and their families. We also recommend the inclusion of additional targets which recognize low-income subpopulations which are particularly vulnerable to high rates of poverty, including aboriginal people, single mothers, recent immigrants and visible minorities. We strongly encourage and support the poverty reduction strategy's annual progress reports.

Mr. Tom Cooper: Around initiatives to improve the lives of those living in poverty—

The Chair (Mr. Shafiq Qaadri): Pardon me, I need you to identify yourself for Hansard, please.

Mr. Tom Cooper: My apologies: Tom Cooper from the Hamilton Roundtable for Poverty Reduction.

We are very supportive of this section of the proposed legislation. We would recommend that the initiatives designed to improve the economic and social conditions of persons and families living in poverty be publicly released by the minister on an annual basis and contain both funded investments and information about government priorities, such as reform of the rules and regulations which keep individuals, children and families living in poverty.

The province of Ontario's poverty reduction strategy identified a number of investments in children, youth and

their families living in poverty. Many of these investments are driven through a variety of provincial ministries. We recommend that a flexible funding and program delivery approach can leverage with municipal investments to create opportunities for people living in poverty.

In the minister's December 2008 report, Breaking the Cycle, rule changes were identified that have since provided much-needed help to families in receipt of social assistance. One such rule previously stipulated that students attending post-secondary institutions, but living with parents who were in receipt of social assistance, could not work a part-time job to offset the costs of education without having those earnings clawed back off the benefit unit's monthly cheque. The government recognized the importance of this rule change so that students can work a part-time job to help pay for what can sometimes be extraordinary costs of getting an education.

But other incongruities abound. One of these is around the temporary care assistance issue, which reveals that many grandparents and other non-custodial family members have been frustrated by rules which may disqualify them from accessing funds to help them cover some of the costs of raising children when parents are unwilling or unable to do so. Grandparents who have established a more permanent living arrangement with their grandkids, being granted custody and having demonstrated intent to raise those kids as their own, have been denied financial assistance despite the fact that if these same children were in the care of children's aid, caregivers would be receiving upwards of \$900 a month.

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Around indicators that will measure success: The legislation speaks to annual reporting on indicators that are linked to the determinants of poverty to measure the success of the strategy. We believe that annual reporting around key indicators will be fundamental to the poverty reduction approach adopted by the government of Ontario. However, provincial indicators would be significantly more impactful if these indicators also included reported results for each community.

We recommend that annual reporting of the eight poverty reduction indicators from both a provincial and community focus would enable local communities to determine the success of their poverty reduction strategies at the community level, gaps in progress and priority setting, as well as determining how the community was doing relative to the provincial status.

The government of Newfoundland and Labrador has developed an extensive community-based website which supports local government, community organizations and citizens to better understand how their community is doing and to take action. This website is definitely worth a look.

Hamilton is ready for action, and we're willing to help. Hamilton is ready with a strategic plan in place through our framework for change and starting point strategies that are building successful collaborative initiatives. These have included specific investments in children, youth and their families. Hamilton has been extremely effective in responding to community needs through flexible program delivery. The round table further encourages a flexible, community-led rollout of the Ontario poverty reduction strategy, which allows municipalities and community organizations to effectively meet local needs and priorities.

The round table's collaborative approach of engaging cross-sectoral partners is a leading-edge approach for complex issues. The Hamilton Roundtable for Poverty Reduction has successfully worked across silos to bring some real results for children, youth and their families living in poverty in Hamilton. We have worked collaboratively and have achieved real results. Hamilton is well placed to respond as a pilot site for poverty-related initiatives, and we can help the government of Ontario achieve results and impacts immediately. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Cooper and to your colleagues. About a minute or so per side, beginning with Ms. Munro.

Mrs. Julia Munro: I wanted to ask you just a couple of questions because of the brevity of time that we have available. I notice that there was very little reference made to either the consultation process or the report writing. I wondered if you had concerns around this.

As an opposition member, I've certainly identified the fact that these processes are not public and there's no list of bona fide people. I just wondered if you shared that concern.

Ms. Liz Weaver: Absolutely, we do. When the provincial government, around the Ontario poverty strategy, looked to communities for their input over the course of last summer, we actually worked with our five Hamiltonarea MPPs and held a community consultation which involved more than 200 of our citizens around the poverty reduction strategy. We believe that any type of consultative process should include people with lived experience as well as individuals from communities representing all of the sectors.

The Chair (Mr. Shafiq Qaadri): With regret, I will need to intervene there. Mr. Prue.

Mr. Michael Prue: You talked about a couple of government initiatives where they've ended or partially ended the clawbacks for students and grandparents. You didn't say anything about the clawbacks to the disabled, which continue unabated. Any discussion, any comments you might have on that? Fifty per cent of everything they earn is taken off them.

Mr. Tom Cooper: Certainly it's an issue that remains a concern. In Hamilton, many of our low-income members of the round table and other community initiatives were extremely vociferous in terms of appealing the issue around post-secondary earnings issues. As you're well aware, we've had a collaborative approach in dealing with the temporary care assistance issue, working with our local member as well as other advocacy groups in the community, including Raising our Children's Kids, the ROCK group. But there remain numerous issues and, as

we mentioned, incongruities in terms of looking at policies that do tend to keep individuals living in poverty. So we are very interested in working across lines to try to come up with workable solutions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Prue. Ms. Van Bommel.

Mrs. Maria Van Bommel: On your last page, you talk about indicators being done at the community level. I'm just kind of curious: Who would do that, and how would they do that in smaller communities and rural communities like my constituency, where we don't necessarily have the human resources to do that kind of thing, or it would add to the workload of people there?

Ms. Liz Weaver: In the case of Newfoundland and Labrador, government takes the lead and works with a collaborative group to post all that information online. Certainly, that has really informed communities across Newfoundland and Labrador, whether it's a rural community or a larger municipality, and we look upon that as kind of a best practice model. So if the government has identified eight indicators and you are tracking that at a provincial level, if we knew how Hamilton was doing relative to those similar eight indicators, that would certainly help focus our work at the municipal level, in terms of graduation rates, EQAO results and the low-income measure.

What we're saying is, could government take the lead on that and provide a web-based resource so that all municipalities across Ontario would be able to see where they are, relative to the indicators that—

Mrs. Maria Van Bommel: So this would be more of a resource for municipalities—

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Van Bommel, and thanks to you, Ms. Weaver and Mr. Cooper, and to your colleagues on behalf of the Hamilton Roundtable for Poverty Reduction, both for you presence as well as your written deputation.

INCOME SECURITY ADVOCACY CENTRE FOR THE 25 IN 5: NETWORK FOR POVERTY REDUCTION

The Chair (Mr. Shafiq Qaadri): I invite now our next presenters, Ms. Marrone and Ms. Blackstock, of the Income Security Advocacy Centre for the 25 in 5: Network for Poverty Reduction.

Welcome. You've seen the protocol. You've got 15 minutes in which to make your presentation. I'd invite you to please begin now.

Ms. Sarah Blackstock: Good afternoon. My name is Sarah Blackstock, and I am the research and policy analyst with the Income Security Advocacy Centre. We're a provincial legal clinic focused on poverty issues. With me is Mary Marrone, who is the director of advocacy and legal services at ISAC. We are part of the 25 in 5: Network for Poverty Reduction, which has already been introduced to you.

Bill 152 is undoubtedly a very important piece of legislation, because it commits Ontario to working on an

ongoing basis to reduce poverty. It's a good piece of legislation, but it can and must be improved so that Ontario has the bold, carefully crafted, thoroughly evaluated and widely debated poverty reduction strategies we need to build the province we want.

25 in 5 is recommending a number of amendments that we believe will strengthen this legislation. The specific amendments have been provided in the written submission, and I'll just address a few of them this afternoon.

Firstly, like my colleagues before me, we agree that this legislation must commit Ontario to being a leading jurisdiction in the drive to reduce poverty. As part of such a commitment, the legislation should be amended to acknowledge that the ultimate goal of poverty reduction strategies is to eliminate poverty. What is the point of this work, I ask you, if it's not to create a poverty-free Ontario?

If the purpose of poverty reduction strategies is to make substantial, ongoing progress toward eradicating poverty, then the legislation must keep us moving forward in bold, ambitious and realistic ways. Toward this, 25 in 5 recommends that section 3 be amended to clarify that when new targets are established, they must represent a substantive reduction in poverty within the next five years and the targets must ultimately address all poverty in Ontario.

While the current poverty reduction strategy, Breaking the Cycle, only, and in our view erroneously, focuses on children, Ontario's efforts to reduce poverty must include combatting adult poverty, and so 25 in 5 is seeking an amendment to recognize the need to address adult poverty.

25 in 5 also believes that if poverty reduction is going to be taken seriously, the work of poverty reduction and the principles that direct it need to be incorporated into all public policy. As has been said before, poverty is as much the work of the Ministries of Education, Health and Labour, for example, as it is the work of the Ministry of Community and Social Services. Indeed, it's only when the work of ministries is integrated and the poverty reduction lens is widely applied that Ontario will have the public policy we need to reduce and ultimately eradicate poverty. Therefore, 25 in 5 is recommending an amendment that would commit all of Ontario's laws, policies and practices to be consistent with the principles outlined in this strategy.

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That said, 25 in 5 is seeking an amendment which would add an additional principle. Inequality contributes to poverty. Poverty contributes to inequality. Legislation requiring successive governments to continue the critical work of poverty reduction must concurrently express their institutional commitment to equitable life chances for all Ontarians, as well as the protection and enhancement of human rights. Therefore, 25 in 5 recommends that an additional principle be added, which reads, "Strengthening Ontario's human rights laws and the enforcement system is essential to the reduction of poverty."

The historic significance of Bill 152 should not be understated. Finally Ontario will have meaningful, measurable plans to reduce poverty. The public, as well as the opposition parties, must have ample opportunity to consider and contribute to Ontario's poverty reduction strategies. This is what will ensure that the strategies are strong and resilient. So 25 in 5 is recommending that the legislation be amended to require annual reports to be tabled in the Legislature.

Similarly, to ensure that Ontario's poverty reduction strategies are robust in their evaluation and recommendations, and are done in a timely manner, 25 in 5 is recommending that an independent body be appointed to conduct the reviews, and more specific timelines be put

in place regarding the five-year review.

In conclusion, the 25 in 5: Network for Poverty Reduction believes that the amendments we have suggested this afternoon and the ones elaborated on in our written submission would make Bill 152 a more effective instrument in our shared effort to ensure that poverty reduction remains the permanent business, not only of government, but of the people of Ontario.

The Chair (Mr. Shafiq Qaadri): Thanks very much. We have about three minutes per side, beginning with

Mr. Prue.

Mr. Michael Prue: Most of the poverty consultations that led up to the bill were by invitation only. It was very difficult for some groups, and people living in poverty, to get in. How are you proposing that the poverty discussions following the bill would be set up so that it isn't just people appointed by the government telling them what a good job they're doing?

Ms. Mary Marrone: Are you talking about the con-

sultations at the end of the review period?

Mr. Michael Prue: Yes. There's going to be an independent review. Often, what happens at the end is that the government invites people in who are friendly to them, to say what a good job they've done, and then they parade that report around. How can we get something that is a little bit more independent and a little bit less biased?

Ms. Mary Marrone: I think you start by appointing an independent body. Precisely how that's done—there are a number of options. There's the Public Appointments Secretariat; the minister could appoint. But it needs to be somebody who has the confidence of the low-income community and the people of Ontario.

What we've suggested, by way of amendments, is timelines and the need for consultation. I think the consultation process needs to be open. What is critical is that it's an opportunity to do a constructive but critical review of the successes and failures of the first poverty reduction strategy. For this to continue to be meaningful, we have to be clear on what worked and what didn't work. Transparency is going to be key to that happening in a meaningful and productive way.

Mr. Michael Prue: Other jurisdictions in Europe and Quebec certainly have a much more independent review.

Are you seeing something along those lines?

Ms. Sarah Blackstock: Yes, something that is completely arm's-length from the government. We believe strongly that to get the evaluation we need to build stronger strategies, we need to have that independence. There are models in Europe that we can look to; the EU has done very interesting work. The key is independence.

Mr. Michael Prue: The minister said something today that I thought bordered on the bizarre, stating that this law makes Ontario the leading jurisdiction on poverty in the world. Would you share that view?

Ms. Sarah Blackstock: At this point, no. However, we could be. It's exciting that we have an opportunity in this process for these amendments to be taken seriously. Even in the few presentations that I've heard this afternoon, there's a great amount of consensus about what we need to strengthen this legislation. So let's become the leading jurisdiction in the world.

Ms. Mary Marrone: I think the one amendment that could put us in the lead is adding the piece about principles guiding all legislation policy and practice, because then you get beyond just this poverty reduction strategy and the next one five years down the road. That takes you to specific policy initiatives that come out of the strategy. Imagine what a social assistance program would look like that would have to respect these excellent principles that have been set out in this act, but at this point only apply to the strategy itself. We'd like to see them applied to any legislation, whether it's housing, whether it's social assistance, whether it's education, to ensure that the differential impact on—

The Chair (Mr. Shafiq Qaadri): Thank you. We'll now move to the government side. Mrs. Van Bommel.

Mrs. Maria Van Bommel: We move very quickly here, don't we?

I just want to pursue a little bit further what Mr. Prue started talking about, which is who's setting standards and who's going well beyond. Would you not agree that this is the first legislation anywhere that actually mandates that there be a strategy developed every five years?

Ms. Sarah Blackstock: I don't know the answer to that question. It could well be, but the point remains that to be a leading jurisdiction, there are things that can be done to amend the legislation. But in terms of acknowledging that, I can't answer that question. I know in Europe, for instance, they update their policies on a regular basis.

Mrs. Maria Van Bommel: But do you know if that is mandated within law?

Ms. Sarah Blackstock: I don't know. I don't think so. Mrs. Maria Van Bommel: You talked about the fact that you felt it was erroneous for the first strategy, Breaking the Cycle, to be focused on children. I think you would both agree that poverty should not be inevitable. I'm just wondering, as a first strategy and as a first target, do you think that it should have been different? Could you suggest what it should have been?

Ms. Mary Marrone: I think there are a number of disadvantaged communities that include highly disadvantaged adults, and leaving adults out of the conversation is a huge omission. As was raised earlier, people with disabilities should not be left behind. That was a constituency that was very disappointed with the poverty reduction strategy. We can't lose sight of the fact that children live with adults, and there are adults without children who live in poverty. Single people without children are among the poorest in the province.

Mrs. Maria Van Bommel: I don't think anyone disagrees with that, but I think as a starting point, as a first target, you have to make a decision as to where you would start to move on the whole issue of poverty reduction. I'm just curious as to why you thought that starting with children was an erroneous thing to do.

Ms. Sarah Blackstock: The 25 in 5 Network has always been clear that we think all poverty needs to be addressed. When we set that target, we were very clear in talking about child and adult poverty, for precisely the reason that Mary mentioned: Children live with adults. The best way to combat poverty is with an integrated strategy that acknowledges that—

The Chair (Mr. Shafiq Qaadri): Thank you. To Mrs. Munro.

Mrs. Julia Munro: I have two questions I'd like to ask. In recommendation 6, you say, "Strengthening Ontario's human rights laws and the enforcement system is essential to the reduction of poverty." I think you've combined two fairly complex things there. I just wonder, first of all, if you'd comment on strengthening the human rights laws and then this reference to an enforcement system.

Ms. Mary Marrone: I think the reference there is, this is the mirror side of the recognition of the principle of diversity and disadvantage, and in order to combat that, equality is critical. I think we're primarily talking about the enforcement of the current Human Rights Code and the strengthening of the tribunal, the strengthening of the human rights centre, to make sure that we have legislation that is enforced in this province.

1520

Mrs. Julia Munro: Thank you. I think that's an important clarification.

The second question I have is, do you have any concerns about establishing a base from which to measure progress? Because you do talk about the importance of that being a more transparent and public process than this legislation envisages. I just wonder, then, if you have any concerns about how you're going to establish a base from which to measure progress.

Ms. Sarah Blackstock: I'm sorry, I'm not sure I fully understand the question.

Mrs. Julia Munro: Well, in the current piece of legislation that we're looking at, there is no public mandated process. There's a report to be written and people to consult, and that's it. My question is, are you not concerned, then, about the fact that there's no base from which to then be able to look at these reports and say, "We've gone from A to B"?

Ms. Sarah Blackstock: And that's precisely why we've called for the reports to be tabled in the Leg. We

have other recommendations that specify some of the indicators that we would like to be used to measure poverty. So absolutely, those are key amendments that need to be addressed so that we can continue to build.

We also specified that we wanted an amendment that indicated that the targets have to build on one another, so that we do 25 in 5, and 50 in 10, and we get to a poverty-free Ontario.

Mrs. Julia Munro: Thank you.

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Munro, and thanks to you, Ms. Marrone and Ms. Blackstock, on behalf of your deputation for the advocacy centre for 25 in 5.

WELLESLEY INSTITUTE

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter, Mr. Shapcott of the Wellesley Institute, to please come forward and introduce your colleagues as well. As you've seen in the protocol, you have 15 minutes in which to make your presentation. I would invite you to begin it now.

Mr. Michael Shapcott: Thank you very much. We do have a written submission. My colleague Aerin Guy will introduce herself.

Ms. Aerin Guy: Hello, my name is Aerin Guy, and I'm the communications manager at the Wellesley Institute. This is my colleague Michael Shapcott, who is the Wellesley Institute's director of social innovation and affordable housing.

Thank you very much for the opportunity to make these submissions in support of Bill 152, Ontario's draft anti-poverty legislation.

The Wellesley Institute is a research, policy and social innovation think tank dedicated to advancing urban health. We don't just document problems; we work with our partners to advance pragmatic and effective solutions. We are proud to be a founding partner of the 25 in 5: Network for Poverty Reduction.

We were pleased when the Ontario government announced in early December that it would build its antipoverty plan on the solid foundation of legislation. We support Bill 152 and, along with our partners in 25 in 5, we believe that key amendments will ensure that this legislation becomes the cornerstone for a poverty-free Ontario

You've already heard from 25 in 5. We urge the committee to adopt the 25 in 5 recommendations.

Mr. Michael Shapcott: Poverty is making Ontarians sick, and that's not just a provocative statement. It's the title of the first of a series of powerful new research studies from the Wellesley Institute and our partners at the Community Social Planning Council of Toronto, and the Social Assistance in the New Economy initiative at the University of Toronto. Our research shows that the poorest Ontarians—not just children, but adults and seniors—have significantly higher rates of poor health and chronic conditions than wealthier Ontarians, as much as seven times higher. Poor people suffer higher rates of

diabetes, heart disease, chronic bronchitis, arthritis and rheumatism, mood disorders and anxiety disorders.

In fact, most distressingly, our research shows that one in 10 social assistance recipients in Ontario considered suicide in the previous year, and that suicide attempts by social assistance recipients in Ontario are 10 times higher than they are for the rest of Ontarians. In our opinion, this amounts to an indictment of our provincial income support programs when such a high number of people are being driven to poor health and absolute despair.

However, there's one other set of findings that does offer some hope. Some sophisticated, multivariate analysis by University of Toronto Professor Ernie Lightman shows that every \$1,000 increase in income leads to statistically significant and, in some cases, substantial improvements in health outcomes. The bad news is that poverty is making Ontarians sick. The good news is that increases in income have a powerful and positive impact on health.

We have a series of practical recommendations we'd like to leave with the committee today.

First, we believe that Bill 152 needs to amended to ensure that it's rooted in principles of equity and equality. Specifically, we think that section 2.2, which is the "Principles" section of the legislation, needs to include a section that acknowledges equity and equality. We have some language in our submission. We know that the legislative lawyers will have their go at things as well and put it into their Shakespearean prose. But we think that it's very important that specifically equity, equality and fairness are acknowledged as being integral to a poverty reduction strategy.

Secondly, we're proposing that the "Principles" section be further amended to recognize the importance of the third sector: the voluntary, non-profit, charitable and community-based groups that not only are on the front lines of providing practical support to lower-income Ontarians, including the victims of the current recession, but also that it's the third sector that's providing the innovation and inspiration to build the Ontario of the 21st century. The government did acknowledge in its poverty reduction framework last December the importance of the third sector, but the draft legislation is silent on the third sector. So again, we've suggested some wording that recognizes the importance of the third sector in terms of poverty reduction strategy, and we'd commend that to the committee.

I'd like to say that last year at the Wellesley Institute, we applauded the Ontario government when it announced plans for a modest but very important \$20-million social innovation fund for the third sector. Unfortunately, the provincial finance minister put those plans on hold with his fall economic update. However, in December, in terms of the roller coaster, the fund was put back on the fast track as part of the poverty reduction framework, only to be suspended once again in the spring provincial budget.

Ms. Aerin Guy: Thirdly, we want to emphasize that the project of ending poverty is even more important

today, as the province slips deeper into economic recession, than when the government launched it more than a year ago.

However, we also want to acknowledge that there are a great many requirements for government funding. Therefore, we believe that the government needs to consider initiatives that leverage its poverty investment dollars—putting the dollars to work as effectively as possible. Specifically, we would ask this committee to recommend that the government leverage those investments that have the most impact on reducing health disparities, including enhanced primary care, integrated cross-sectoral interventions, early childhood intervention and support, and integrated hub-type community centres providing a range of services customized to greater and more complex needs of the poor.

Fourth, we want to emphasize, based on our observations of poverty reduction initiatives in other jurisdictions, that it is critical to align the legislation and principles of the province's poverty reduction plan with the provincial budget. This ensures that the budget allocations are aligned with policy decisions and prioritized strategies.

Fifth, we believe that Ontario's poverty reduction plan will only succeed as all the line ministries are fully engaged and their work is effectively coordinated.

The Ontario government has recognized this critical imperative in creating a cabinet-level committee that includes key ministers. That's a good first step. Now the government needs to effectively engage the departments and people throughout the various ministries.

Sixth, ongoing monitoring is essential to strengthening the understanding of how well public programs meet the real needs of lower-income Ontarians, and in assessing the poverty-reducing impact of public spending.

Seventh, and finally, we want to note that the Ontario government has the opportunity to put its principles into practice this spring as it launches two very important rounds of consultations on creating a comprehensive affordable housing plan and reviewing social assistance.

Housing and income assistance are critical pillars in any poverty reduction plan. The cost of housing is the single biggest expense for low-, moderate- and even middle-income households, and Ontario has the highest housing costs in Canada. Bill 152 doesn't reach down to the details of these critically important consultations, but we urge members of this committee to remain firmly engaged in specific components of the poverty elimination plan as they are brought forward.

Thank for you for the opportunity to make these submissions

The Chair (Mr. Shafiq Qaadri): Thanks very much. We have about two minutes or so per side, beginning with Ms. Van Bommel.

Mrs. Maria Van Bommel: Thank you for your presentation. I just want to refer to page 3, where you talk about—and we all know that as the economy continues to go down, there are a lot more pressures and families are certainly experiencing, some for the first time, some real

issues financially and are having an experience with poverty.

You talk about hubs. My experience with hubs has always been more for childhood education and early childhood interventions. Can you describe how you envision these hubs and how you would establish them in the communities, and how you would do it in remote and rural communities and that sort of thing?

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Mr. Michael Shapcott: There are excellent models, in terms of the delivery of primary health care, in terms of community health care centres, and the Ontario government is taking certain steps in this direction. We think those steps need to be encouraged.

Mrs. Maria Van Bommel: So you would incorporate them with health care, with the family health teams?

Mr. Michael Shapcott: Incorporating them into community health centres, multidisciplinary health practices—so, delivering primary care services plus a range of other services and programs. Again, there are some specific examples of that.

On your question of how to ensure that they reach out across the geography, that is a critical issue outside of the urban areas, in particular. There are some mobile responses that can actually help to get services and programs to where people are. We also know that there are specific programs that have been modestly used within health: health ambassadors, for instance, who help to bring health care services and programs directly to people.

Mrs. Maria Van Bommel: You talk about incorporating them. I'm glad to hear you talk abut them in terms of existing things such as health care centres, because I know that in rural communities—

The Chair (Mr. Shafiq Qaadri): With apologies, Mrs. Van Bommel, I will intervene. Mrs. Munro.

Mrs. Julia Munro: I have a couple of questions. When the government first announced the \$20-million social innovation fund, were you privy to any kind of details or any suggestion of the direction that money might take?

Mr. Michael Shapcott: No.

Mrs. Julia Munro: In your presentation you said, "It is critical to align the legislation and principles of the province's poverty reduction plan with the provincial budget." Is that on the assumption that any reporting would be in the public domain?

Mr. Michael Shapcott: We do think there needs to be reporting in the public domain and through a variety of mechanisms. We know that there is increasing use in a number of political jurisdictions of various public auditing processes as a way of determining. For instance, a few weeks ago in British Columbia, the provincial auditor released a very detailed audit of provincial housing and homelessness programs which was extremely useful. It tracked dollars, but it also tracked the effectiveness of the services and programs in reaching people.

Mrs. Julia Munro: So you would certainly support any motion that would have this reporting public—

Mr. Michael Shapcott: It should be entirely public, yes.

The Chair (Mr. Shafiq Qaadri): Mr. Prue.

Mr. Michael Prue: You talk about equity and equality here. The statistics that I've seen on poverty increasingly show that the face of poverty is new immigrants, First Nations, people of colour, the disabled. How do you propose that the government attack that issue? They've left it out of this poverty consultation to date.

Mr. Michael Shapcott: Our recommendation is, first of all, to enshrine in legislation itself that equity and equality need to be a central principle of legislation. We think the legislation itself needs to be amended to include that.

You'll be hearing shortly, I think, from the Colour of Poverty organization. They'll be giving some specific recommendations.

I will say that our research does in fact show that issues of health, issues of poverty and issues of equality definitely have a colour to them. We do work, for instance, in a downtown Toronto neighbourhood you're familiar with, St. James Town, where there is a large number of what used to be called visible minorities, but what are now the visible majority, where people are suffering extreme rates of poverty, far out of proportion in terms of their relative weight in the population.

So we do think these issues have to be addressed, but our recommendation is, first of all, that it has to start with the legislation itself, as one of the governing principles of the legislation, and then that has to be incorporated into the measurements, and it has to be incorporated into the targets of the program, and ultimately into the funding and the various details of the poverty elimination plans.

Mr. Michael Prue: You talk about the government having two comprehensive affordable housing plans and of reviewing social assistance in the future. Would it not have been better for the government to have put those plans on the table before this bill was put to committee so that we would know really where the government was going?

Mr. Michael Shapcott: Well, Ontario of course used to have a reasonably comprehensive affordable housing program, but that was dismantled starting in 1995. So now it's a process of starting to rebuild that—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Prue, and thanks to you, Mr. Shapcott and Ms. Guy, for your deputation on behalf of the Wellesley Institute and for abiding by the rigorous enforcement of the time management.

SOCIAL PLANNING NETWORK OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenters, Ms. Vaughan and Mr. Novick, for the Social Planning Network of Ontario. You've seen the protocol. You have 15 minutes, the same 15 minutes, in which to make your presentation, and I'd invite you to begin now.

Ms. Tracey Vaughan: My name is Tracey Vaughan. I'm the executive director for Community Development Council Durham and a board member of the Social Planning Network of Ontario.

The Social Planning Network of Ontario is pleased to have this opportunity to present its views on Bill 152 to the Standing Committee on Social Policy. The SPNO is made up of 20 local social planning and community development councils across the province. All are independent, community-based organizations that are dedicated to the social and economic well-being of their communities. Since February 2008, the SPNO has worked with community leadership in more than 25 communities across Ontario to promote the 25 in 5 declaration on poverty reduction and specific policies and programs that are required in a serious poverty reduction strategy for Ontario.

The SPNO wishes to express its clear support for the recommendations for amendment of Bill 152 presented in the submission of the 25 in 5: Network for Poverty Reduction. We also wish to make some additional suggestions for strengthening Bill 152.

The SPNO strongly supports the 25 in 5 recommendation that the first paragraph of the preamble be amended to refer to the vision of a poverty-free province. Notably, as early as 2002 the Quebec government set a strong target and clear timelines in article 4 of its own anti-poverty law: "The national strategy is intended to progressively make Quebec, by 2013, one of the industrialized nations having the least number of persons living in poverty, according to recognized methods for making international comparisons."

The SPNO further recommends that the current government commit to a stronger target for its own child poverty reduction goal by adding to the second paragraph of the preamble, "and a 50% reduction of Ontario children living in poverty within 10 years." The governments of Quebec, Newfoundland and Labrador, and the United Kingdom are all committed to major reductions in poverty over 10 years, and Ontario should not hesitate to make the same commitment.

In terms of concerns about binding future governments, in that regard we would like to point out that: a five-year commitment for a 25% child poverty reduction by 2013 already extends beyond the next provincial election in 2011, and therefore presents the next Ontario government with the challenge to fulfill that commitment; and government legislation is not binding. Future governments of whatever political stripe will either honour or they will rescind the commitments to poverty reduction in the new act.

We would also like to challenge the notion of breaking the cycle of intergenerational poverty as a primary initial focus. The SPNO is very concerned about the third paragraph in the preamble of Bill 152, which reads: "The initial focus of the government's strategy is on breaking the cycle of intergenerational poverty by improving opportunities for children, particularly through the education system." The SPNO recommends that this paragraph

be amended as follows: "The initial focus of the government's strategy is on breaking cycles of poverty by improving economic, learning and developmental opportunities for children and families across Ontario."

This is important for the following reasons. The current language promotes the notion of an underclass. The preamble to Bill 152 risks seeding the notion in this framework legislation that poverty is the responsibility of the people who are poor. References to intergenerational poverty evoke images of an underclass.

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The convenience of the "underclass" theory, in which poverty becomes transmitted from generation to generation, is that it absolves governments from taking the action necessary to address the fundamental structural, economic and social factors that are the root causes of inequity and poverty in our society. These are not acceptable assumptions for grounding the framework legislation on poverty reduction in Ontario.

There's a lack of evidence for intergenerational poverty as a predominant concern. There is no evidence that intergenerational poverty is the predominant or primary

source of poverty in Ontario.

A recent report released by the Ontario Association of Food Banks cites Canadian research that reports "fairly high rates of intergenerational income mobility; that is, a relatively small likelihood that the children of low-income Canadians will themselves experience low incomes when they grow up."

It is important that the framework legislation for poverty reduction in Ontario not suggest that the primary or predominant source of poverty is passed from one generation to the next.

Addressing major structural conditions that determine life opportunities: Given the preceding, the preamble to Bill 152 should assert the need for breaking cycles of poverty that lie in structural factors which deny access to adequate and decent living conditions for individuals and families in Ontario.

When 45% of Ontario children living in poverty are in families where at least one parent is working full-year, full-time, as Ontario Campaign 2000 reports, the problem is hardly an issue of intergenerational poverty. Rather, the barriers to escaping poverty for this shamefully high number of children and families lie in the following: inadequate income support programs; labour market conditions such as low wage levels and the lack of good jobs; inaccessibility to essential family supports, such as affordable and quality childcare; and the cost of housing.

When we situate the role of education appropriately, the government's poverty reduction strategy expects a lot of Ontario's education system with respect to poverty reduction. This is reinforced in the third paragraph of the preamble to Bill 152. Some suggest that a contributing factor to intergenerational poverty is a lack of school completion and conclude that reducing drop-out rates will lower poverty rates.

While the correlation between educational achievement and higher income levels is undeniable, it is import-

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ant not to assume that the lack of school completion is an inherent characteristic of low-income families. When we look at Duncan's work, they concluded from their study of school completion and family incomes in the late 1990s the following: "These analyses suggest that economic conditions in early childhood have the biggest impact on achievement, especially among children in families with low incomes. Estimates from sibling models support the hypothesis that economic conditions in early childhood are important determinants of completed schooling."

The Quebec anti-poverty law actually frames the role of the education system as primarily preventive in subsection 8(3). Further, it affirms the role of other developmental supports, such as culture, recreation and sports in addressing poverty. Bill 152 should similarly acknowledge this area, at least in the preamble, which is why SPNO recommends that in addition to improving economic conditions to break cycles of poverty, that paragraph 3 also refer to improving "learning and developmental opportunities for children and families across Ontario."

When we look at addressing the reduction of adult poverty in Ontario, the SPNO recommends the addition of a fourth paragraph to the preamble to Bill 152 as follows: "A continuing objective of the government strategy is to reduce levels and depths of poverty for all adults across Ontario." It is important for the government to express its own clear commitment to substantive poverty reduction for all Ontarians beyond its initial focus on children and families in poverty.

The SPNO is particularly concerned by this omission in Bill 152 because of our outreach to communities across the province in the last 15 months. There was strong support for reducing child and family poverty, but also serious concern that the government's poverty reduction strategy would not be complete or comprehensive if it did not include commitments to low-income individuals and couples without children.

Notably, the latest report of the advisory committee to combat poverty and social exclusion in Quebec concludes that although family incomes have improved since 2002, unfortunately the same cannot be said for singles and childless couples who are on social assistance.

In conclusion, we understand that the framework legislation represented in Bill 152 must be consistent with the current government's initial plan. However, we urge that the legislation for framing a long-term provincial poverty reduction strategy for Ontario be expansive enough to allow stronger action in the future by both this government and future governments of Ontario.

The Chair (Mr. Shafiq Qaadri): We have about 90 seconds per side, beginning with Mrs. Munro.

Mrs. Julia Munro: Am I correct in assuming from your comments that you aren't satisfied that there is sufficient direction given in this legislation that would guarantee that there would be a gradual progression from looking at children to other members of our community?

Mr. Marvyn Novick: The legislation is unclear. It sets up children as deserving attention and ignores adults. Our comments are around treating everyone equally, and communities across Ontario have said they want this.

The Chair (Mr. Shafiq Qaadri): Pardon me. I need you to identify yourself as well, please.

Mr. Marvyn Novick: I'm sorry. I'm Marvyn Novick from the Social Planning Network of Ontario.

Mrs. Julia Munro: Thank you. I just felt that it's really important for people to understand that there's a gap in the legislation that we're looking at that doesn't speak to, frankly, what I would agree with you as being an extremely important omission.

Mr. Marvyn Novick: Absolutely.

The Chair (Mr. Shafiq Qaadri): Mr. Prue.

Mr. Michael Prue: Rates of poverty amongst the disabled are shockingly high. Most disabled, we know from statistics, have no children, which ought not be a surprise to people. Therefore, any government strategy such as this that focuses just on children is going to, of necessity, bypass completely those who are probably most vulnerable. What would you suggest they do?

Mr. Peter Clutterbuck: It's true that many disabled people do not have children, but they also are experienceing higher levels of poverty. That's one of the reasons we make a specific recommendation around making sure that adult poverty is included in the preamble and in the objectives of this particular government. Specifically, we've proposed things like the \$100-a-month healthy food supplement to support all adults in terms of starting to gain the capacity to meet the basic necessities of life, in terms of rent, food and other necessities.

Mr. Michael Prue: Is this similar to the \$42 the government announced for children? You'd want to see a similar type of subsidy for the disabled for healthy food?

Mr. Peter Clutterbuck: Actually, it amounts to adding just to the basic needs allowance that already exists in OW and in ODSP for people to meet their basic living requirements. It doesn't require a new program or a new benefit. It just requires recovering the 40% that has been lost since the mid-1990s in terms of basic income for people.

The Chair (Mr. Shafiq Qaadri): To the government side. Mrs. Van Bommel.

Mrs. Maria Van Bommel: You talk about supporting the 25 in 5 recommendations, and then you go on to talk about a number of other things. They all kind of deal with the preamble, which is non-binding in terms of what we do with this legislation. Is there anything other than the recommendations from the 25 in 5 that are actually specific to the legislative piece of this bill?

Mr. Marvyn Novick: No, because the preamble is a problem. It is flawed. It stigmatizes people in poverty through intergenerational—it doesn't address adults. And it's a weak commitment—25%. In other jurisdictions, the commitment is over 10 years deeper. So we think the preamble has to get it right before you go into the legislation.

The Chair (Mr. Shafiq Qaadri): Thanks to you for your deputation on behalf of the Social Planning Network of Ontario.

UJA FEDERATION OF GREATER TORONTO

CANADIAN JEWISH CONGRESS, ONTARIO REGION

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenters, Mr. Adler, Mr. Spiro and Dr. Bialystok of the UJA Federation of Greater Toronto and the Canadian Jewish Congress, Ontario Region. Welcome. I would just invite you all to identify yourselves individually as you speak. Please begin now.

Mr. Stephen Adler: My name is Stephen Adler. I'm the director of public policy and governmental affairs for UJA Federation of Greater Toronto. UJA's mission is to preserve and strengthen the quality of Jewish life in greater Toronto, Ontario, Canada, Israel and around the world through philanthropic, volunteer and professional leadership.

CJC Ontario Region is the advocacy agency for the Jewish communities of Ottawa, Toronto, London, Hamilton, Windsor and those communities that are on the smaller side but do have a Jewish communal presence. We're honoured today to join you and to present to you a Jewish community perspective on the bill.

I am joined today right by David Spiro, chair of the public affairs committee of the UJA Federation of Greater Toronto; Dr. Frank Bialystok, the regional chair for the Canadian Jewish Congress, Ontario Region; Len Rudner, who's the regional director for Ontario Region; and Melanie Simons, who is our national director of social policy at Canadian Jewish Congress.

It is our intention to provide you with a bit of a presentation and some recommendations and hopefully leave time for questions and answers. You have our packages in front of you, so if we highlight only some of the recommendations, the full list of 12 recommendations has been provided to you.

I now turn it over to David Spiro.

Mr. David Spiro: Thank you. Good afternoon. My name is David Spiro and I chair the public affairs committee of UJA Federation of Greater Toronto. I would like to begin by thanking the government of Ontario for its leadership in recognizing the scourge of poverty and undertaking to address it in very real terms. We know how important this legislation will be to the province as a whole and to the Jewish community in particular in our collective effort to reduce the impact of poverty.

As you may be aware, the Jewish community has a successful track record of programs and services addressing the issue of poverty. We've learned that each community has unique needs and that a one-size-fits-all approach has a low probability of success. The lessons learned over time have brought us to the realization that a

multi-dimensional and integrated approach among a number of agencies, backed by community leadership, is most effective at helping reduce the scope of poverty within the community.

The foundation of our approach to fighting poverty lies not in charity, but in human rights. It recognizes that all members of the community share an obligation to uphold those rights; after all, every individual is created in the image of G-d and is entitled to dignity, respect and

equality of opportunity.

To that end, UJA Federation created a community social policy table to assist UJA and its funded agencies in dealing with social policy issues that impact Toronto. We convened this table in conjunction with CJC Ontario Region. This table, which includes members of the Jewish community with experience from across the social service spectrum, has met numerous times for the simple reason that we're profoundly concerned about the impact of poverty, within the Jewish community in particular and greater Ontario in general. Our social policy table responded to a request for province-wide input into a poverty reduction plan to be implemented by the government of Ontario, and we've jointly submitted Transforming Lives: A Comprehensive Strategy to Combat Poverty, to Minister Matthews and the cabinet committee on poverty reduction.

Over many decades, CJC and UJA Federation have fought to turn the dream of a poverty-free Ontario into a reality. Our work has helped Jewish and other minority communities realize the right to live as full citizens of Ontario. This work has strengthened our city, province and country. As the late Louis Lenkinski, a Canadian labour and volunteer leader in the Jewish community, observed, "There cannot be justice for the Jews until there is justice for everyone."

The Hebrew term Tzedakah, literally "righteousness," is a core value in the Jewish religion. Tzedakah is not limited to providing of financial support, as charity generally is, although that is an important component of Tzedakah. Maimonides, the great Jewish philosopher, considered various levels of Tzedakah. For Maimonides, the highest level is enabling an individual to gain employment and sustain himself to the point of no longer needing such assistance. This is the ideal for which we strive in our work and I'm confident that, working together, we will help to enhance our collective capacity for achieving the highest level of Tzedakah.

Dr. Frank Bialystok: Good afternoon. My name is Frank Bialystok; I'm the chair of Canadian Jewish Congress in Ontario. I'd like to provide some background on the Jewish community of Ontario for your benefit.

The Jewish community has long been on the front lines of the battle against poverty. In Ontario, over 25,000 Jews, or 11.2% of the population of 230,000, live in poverty. Furthermore, when one looks at the Toronto numbers regarding child poverty, 3,800 Jewish children under the age of 14 years live in poverty, with 33% of those being from single female-parent households.

As we discussed in the Transforming Lives document, a copy of which we have provided for you today, there is

a need for a multi-dimensional approach to the challenge of poverty. Such a strategy would identify key areas where various poverty indicators intersect. Such an approach also acknowledges the uniqueness and complexity of the issue for each individual and/or group. No one-size-fits-all solution will be viable.

The cornerstones of a poverty-free Ontario: We believe that a viable and lasting solution to poverty in Ontario can be found by focusing on interconnected themes or cornerstones—income and employment, housing and

community support services.

Income and employment: The Jewish community, through UJA Federation and its agencies, supports several programs and services that help clients overcome income or employment challenges to find the client sustainable employment with a living wage. Some examples include: Parnossah Works Canada, an innovative confidential service of Jewish Vocational Services that efficiently connects job seekers and employers to place the right person in the right job; and JumpStart, an initiative of JIAS, the Jewish Immigrant Aid Services, of Toronto, which connects skilled Jewish newcomers to suitable and meaningful employment through job placement, mentorship opportunities, volunteering and networking connections.

Housing: Our community's goal is to ensure that each family is spending no more than 32% of its income on housing, in accordance with CMHC guidelines. The Jewish Community Affordable Rental Program, JCARP, is a reduced rental housing strategy created in partnership with Kehilla Residential Programme and UJA Federation. JCARP works closely with Jewish community service agencies.

Community support services: Unfortunately, economic exclusion often goes hand in hand with social exclusion. For many poor families and families living with disabilities, community inclusion can be prohibitively expensive. As a result, our most vulnerable community members are often relegated to the margins and excluded from the richness of community life. Access to services such as child care, family counselling, vocational counselling and financial literacy remain beyond their reach.

It is essential that the government provides financial incentives and support that will enable the third sector, including non-profit, charitable and voluntary organizations, to continue their important work. These organizations help build and strengthen communities, provide employment and make a positive impact on our economy. As such, they should be recognized as an integral component to the poverty reduction strategy and be supported in the legislation appropriately.

Mr. Stephen Adler: Thank you, Frank and David. As I said at the beginning, some of the recommendations have been said by others. All of our recommendations have been provided to you. I'd like to spend just a moment highlighting some that have not been mentioned

here yet today.

In the preamble, we recommend the removal of a reference to a growing economy. Current circumstances

make that unlikely. But do not remove the urgency of the task at hand.

We also recommend that in subsection 6(2), a new clause (c) be included and that it read: "(c) shall appoint an independent body to review the long-term poverty reduction strategy." Nowhere in the proposed bill does it actually say that, and we would like to see it included.

Last, we believe that it's necessary to ensure that ministries do not act in isolation; rather, that they work together to solve the problem of poverty. Other presenters have highlighted the fact that there was a cabinet committee. We recommend going one step further: a similar committee from the bureaucracy, where deputies and assistant deputy ministers sit around the table to discuss and deal with poverty reduction so that ministries do not operate in silos, and, come budget time, they do not fight against each other, but they work together to reduce poverty in this province.

That concludes our presentation. In the short time left, we welcome any questions.

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The Chair (Mr. Shafiq Qaadri): About a minute per side. Ms. Munro.

Mrs. Julia Munro: I think I was first the last time.

The Chair (Mr. Shafiq Qaadri): You're absolutely right. Mr. Prue.

Mr. Michael Prue: When they launched this policy, the government said it was contingent upon three things: a growing economy, a federal government that is compliant and community support. I don't think the economy is growing, as you so correctly put out, and I haven't seen the federal government coming on side, save and except possibly for some housing money. Community support is where I want to zero in.

Are you saying that the government should be investing more in the non-governmental office—NGO—sector and other community and social partners and agencies in order to deliver the service? Is that what I'm hearing?

Mr. Stephen Adler: That is part of it. The other part is to make it easier for third parties to provide service. If there are rules and regulations that prevent a third party from providing affordable housing or make it difficult—a decade ago, you would have said, "Cut the red tape." What we're calling for and asking for, and what we're willing to help you with, is to allow the third party—the non-governmental organizations, the charities, the community associations that are on the ground already—to do the job they want to do.

The Chair (Mr. Shafiq Qaadri): I need to intervene there, Mr. Prue. Ms. Van Bommel.

Mrs. Maria Van Bommel: We run out of time really quickly here.

You talked about an advisory council—I'm not quite sure what you were talking about when you said "interministerial involvement with bureaucrats." Do you have a sense of what ministries you feel are critical to being part of that?

Mr. Stephen Adler: I would copy those who sat around the table for the cabinet committee on poverty

reduction, each minister or parliamentary assistant represented there. The same committee should be struck by the secretary of cabinet and have deputies or assistant deputies sitting around discussing the very same topics, so that while the political hand writes the law, there is an identical table for the implementation, which will go a long way to reduce some of the red tape I was discussing in my answer to Mr. Prue.

Mrs. Maria Van Bommel: I'm not quite sure what different things we would get from having a table with bureaucrats and a table with all of cabinet involvement.

Mr. Stephen Adler: I think there are a lot of times where we have miscommunication between the political end and the bureaucratic end, and that it is important for the different deputy ministers to be able to be involved at the front, purposely and specifically to deal with poverty reduction only, and have them sit around the table instead of being brought in as needed.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Van Bommel, Ms. Munro.

Mrs. Julia Munro: I'd like to follow up on the earlier question with regard to community support services. If I have jumped around here accurately, you are indicating further in your recommendations that they be included in a formal public stakeholder process. I think we might particularly want you to spend the time available to talk about housing in the not-for-profit NGO sector. Could you do that for us?

Mr. Stephen Adler: Sure. We are fortunate, I guess is the word—or unfortunate—that UJA has a partner agency called Kehilla Residential Programme. My colleague outlined the JCARP program. What we're saying is that there needs to be room at the table not just for organizations like UJA but, as I said earlier, those who are on the ground providing the service. It is not wise for me to spend an hour talking about the housing needs of the Jewish community when I have, as a resource, Nancy Singer, executive director of Kehilla, who can talk to you about the battles that are going on on the ground.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms, Munro, and thank you, Mr. Adler, Mr. Spiro and Dr. Bialystok.

METRO TORONTO CHINESE AND SOUTHEAST ASIAN LEGAL CLINIC

COLOUR OF POVERTY CAMPAIGN

The Chair (Mr. Shafiq Qaadri): I invite our next presenters, Ms. Go and Mr. Kerr, on behalf of the Metro Toronto Chinese and Southeast Asian Legal Clinic.

You've seen the protocol. As you're seated, I invite you to begin now.

Ms. Avvy Go: My name is Avvy Go, and I'm the director of the Metro Toronto Chinese and Southeast Asian Legal Clinic.

Mr. Michael Kerr: Michael Kerr, coordinator of the Colour of Poverty/Colour of Change Network.

Ms. Avvy Go: We'll be making a joint presentation this afternoon. I'll start with some general comments about the issue of poverty as it affects racialized communities, and then I'll speak to our recommendations with respect to some of the provisions in the bill. Then Michael Kerr will address some of the long-term proposals we are putting forward to address the root causes of poverty.

The Colour of Poverty Campaign is a province-wide initiative made up of individuals and organizations working to build community-based capacity to address the growing racialization of poverty in Ontario. The clinic is a founding member of the campaign. More information about these two organizations can be found in our written submission.

Poverty in Ontario is not colour-blind. The evidence confirming that racialized communities are experiencing a disproportionate level of poverty is overwhelming. According to a United Way of Greater Toronto report, between 1980 and 2000 in Toronto, while the poverty rate for non-racialized persons fell by 28%, the poverty rate among racialized families rose by 361%. The report also confirmed that Toronto's racialized community members are at least two to three times more likely to live in poverty. The Greater Trouble in Greater Toronto: Child Poverty in the GTA study by the Children's Aid Society of Toronto confirmed that even child poverty has become racialized or colour-coded. Poverty is experienced by one child in 10 among global European groups; one in five among East Asian groups; one in four among aboriginal, South Asian, Caribbean, South and Central American groups; one in three among children of Arab and West Asian groups; and one in two among children of African groups.

It is critical to understand that racialization of poverty is not simply a Toronto problem either. Our written submission cites several studies that were conducted in Hamilton and Ottawa as examples that demonstrate a similar disturbing trend and linkage between race and poverty.

It's also important to remember that increasing racialization of poverty is not gleaned by simply looking at statistics on income and health and wealth, but also from a number of other different measures, such as inequalities with respect to health status and educational learning outcomes; higher dropout or push-out rates among racialized groups; inequitable access to employment opportunities and overrepresentation in low-paying, unstable and low-status jobs; higher levels of under-housing and homelessness and the re-emergence of imposed racialized residential enclaves; as well as the increasing rate of incidence and ethno-racial differentials with respect to targeted policing and the overrepresentation of aboriginal and racialized groups in our prison system.

Given all these facts, there is only one conclusion we can draw; that is, addressing racialized poverty requires systemic and structural solutions.

Bill 152, as it is now drafted, provides a small window of opportunity for the province to start to reduce the general rate of poverty. But to fully tackle the critical issue of the racialization of poverty, we really have to lift the curtain on colour-blindness. To do so, our two organizations recommend a number of amendments to the bill, which begin on page 6 of our submission.

First, we recommend that the preamble be amended to make the eradication of poverty part of the overall goal of the government's long-term strategy. We also recommend changes to the preamble to reflect that every person in Ontario is entitled to an equal opportunity to achieve his or her full potential.

Second, we recommend that a number of provisions in the bill be amended so that any strategy measures and indicators, as well as targets, of poverty reduction developed by the government will be based upon the collection and measurement of desegregated data collected on the basis of race, gender, disability, aboriginal status, family status, immigration status and other such grounds as reflect the disproportionate levels of poverty experienced by these groups in Ontario.

For a poverty reduction plan to succeed, we recommend that the bill should name as one of its core principles the importance of recognizing and acknowledging that racism and other forms of discrimination exist in Ontario, which result in heightened risk and disproportionate levels of poverty experienced by the groups I have just named.

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We also recommend that the bill be amended to ensure that individuals and groups being consulted by the minister will include members of those groups, and groups working with communities of colour, women, single mothers, people with disabilities, aboriginal peoples and newcomers etc.

I call on the committee to consider proposals for change from other committee-based organizations representing these disadvantaged groups.

I'll now turn to Michael to talk about some of the specific long-term measures that will get to the root causes of poverty.

Mr. Michael Kerr: Thank you, Avvy.

I'll take you to page 5 of our submission, where we speak to the critical architecture that's needed in order to affect the kinds of changes that we propose in our other amendments to the bill. We see these four specific recommendations as an opportunity for them to be translated and embedded into the current legislation to give fullest life and expression to the pathway toward change to address the growing racialized inequality.

Admitting that poverty in Canada is racialized is not an easy step to take, and we all understand the hows and the whys of that, but it is a necessary one if you want to develop an effective anti-poverty strategy that addresses the root causes of poverty. We urgently need a comprehensive poverty reduction plan that integrates not only a broad range of universal initiatives, many of which have been spoken to by other deputants today, but, as critical and parallel too, they need to be accompanied by specific targeted measures to remedy the different underlying causes of the vulnerability that exposes racialized

and other disadvantaged communities to disproportionate poverty.

Crucial to best understanding the nature and the implications of this shared challenge is that those who are now ever more concentrated at the bottom of Ontario's economic and social ladders can in fact no longer be fairly treated or referred to as minority populations or communities. In 2006, aboriginal or first peoples, together with communities of colour in the province, made up 25% of the population of the province of Ontario. According to Statistics Canada projections, that percentage will grow by 2017 to a full one third of the province of Ontario's population. That underscores the critical nature of why it is necessary to embed these elements into the legislation. By introducing Bill 152, the McGuinty government has the opportunity to in fact do so.

First, an equity and anti-racism directorate. I won't spell it out; it's written there before you. Second, an equity in employment secretariat to help bring about the necessary and critical changes to equitable access to work and fair pay. Third, an equity in education grant, because, as we all know, that is the foundation of equity in our society: equitable learning outcomes. Fourth, as we move forward with these pathways to address and redress poverty and hopefully over time eliminate poverty, we can incorporate that into our economic strategies so that at one and the same time, as we invest in efforts to address the economic downturn and to rebuild a sustainable economy in the province of Ontario, we can redress the growing racialized disparities.

Ms. Avvy Go: I guess I would just conclude by saying that I think it's very critical that we address this issue now. Otherwise, as poverty rates for some communities continue to be addressed by the government through the general measures, the inequities will continue to grow. So five years, 10 years from now, you may have a 5% reduction in poverty for some the members of mainstream societies, but then that reduction is not going to be applied to racialized groups, to women, people with disabilities, because of the lack of specific measures that target the root causes of their poverty.

The Chair (Mr. Shafiq Qaadri): Thank you. We have about 90 seconds per side, beginning with Mrs. Van Bommel.

Mrs. Maria Van Bommel: I notice that you've been here for other presentations, so I wanted to just go back to an earlier presentation where they talked about intergenerational poverty. They were concerned that we should label such a thing. I heard them say that people work very hard, and I think that's across the board. Parents work hard to make sure that the next generation does better than they did. But would you say that there is a colour-coding in intergenerational poverty?

Ms. Avvy Go: Yes, actually, there are a number of studies, including studies done by the Canadian Labour Congress. They look at the incidence of wealth and income distribution. Second-generation—meaning Canadian-born—members of racialized communities are experi-

enceing higher levels of poverty than their parents. The second-generation Canadian-born are doing worse than the immigrant parent who came before them. Another study found the same thing as well. Part of that is a result of perhaps the lack of equity in the education system, lack of equitable access to jobs. So even though you may be Canadian-born, you may be educated at universities in Canada, you're not getting the same access to employment—

The Chair (Mr. Shafiq Qaadri): Thank you Mrs. Van Bommel. Mrs. Munro?

Mrs. Julia Munro: If I were to sum up what you have said, from my perspective, what we're seeing is an approach that suggests one size fits all. It seems to me that there are a number of studies which try to identify particular groups that are at greater risk. One of those, for instance, is the issue of high school graduation. It would seem to me that what you are looking for here is to be assured that in the writing of these reports and the setting of these strategies, we don't fall into that one-size-fits-all trap.

Ms. Avvy Go: Exactly. We do have a fairly good social safety network system that prevents people going right to the bottom. But even with that system, we are seeing disparities.

Mr. Michael Kerr: And the one-size-fits-all approach is what, in fact, has led us to this structural, systemic, institutional exclusion and marginalization because we fail to address the particularities that have given rise to why individuals are disproportionately experiencing poverty. That's why it's so very critical that we start, from this point forward, addressing one at the same time—

The Chair (Mr. Shafiq Qaadri): Thank you Mrs. Munro, Mr. Prue?

Mr. Michael Prue: At the very first deputations, Campaign 2000 and 25 in 5 Network, they asked that adults be listed in the definition. You go further than that. You want targets for groups of individuals at heightened risk of poverty—communities of colour, women, single mothers, people with disabilities, aboriginal and first peoples, and newcomers. Is it enough to include adults or should we compartmentalize it more, as you have suggested?

Ms. Avvy Go: I think including adults is a good step, it's a first step, but just including adults alone is not going to address the inequities that we speak about. So it will have general measures to address adults without the specific target measures for those who are at a higher risk of facing poverty. It's not just for racialized groups, it's women, people with disabilities and so on.

Mr. Michael Prue: And your last recommendation goes, again, further, that individuals and groups being consulted by the minister must include members of or groups working within those groups. The 25 in 5 suggested that it be members of their community rather than government appointments. Are you suggesting it be compartmentalized into—

Ms. Avvy Go: Yes, because you want to make sure that the voices of those who are most likely to live in

poverty will be heard at the table. So it's not enough to say that we'll hear from the anti-poverty groups. Many of these anti-poverty groups themselves may not be representative of these groups. I think it's important to name who these groups are to make sure that they have a say in the final outcome.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Prue, and thank you, Ms. Go and Mr. Kerr, for your deputation on behalf of the Metro Toronto Chinese and Southeast Asian Legal Clinic.

ONTARIO NON-PROFIT HOUSING ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter, Mr. Lawson of the Ontario Non-Profit Housing Association, and colleagues. I'd invite you to please introduce yourselves as you are speaking. I invite you to officially begin now.

Mr. Hugh Lawson: Good afternoon and thank you. My name is Hugh Lawson and I'm the president of the Ontario Non-Profit Housing Association, otherwise known as ONPHA. I'm also the director of corporate governance for Toronto Community Housing. With me is Sharad Kerur, who is ONPHA's executive director.

ONPHA represents 760 non-profit housing providers in 220 communities across Ontario. Our members operate more than 160,000 non-profit housing units and provide housing for approximately 400,000 people such as the elderly, low-income families with children, the working poor, victims of violence and abuse, people living with developmental disabilities or mental illness and the homeless/hard-to-house.

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Poverty, we can agree, comes from a lack of income. It means that those who live in poverty experience deprivation and are unable to purchase basic goods and necessities. And it means that access to goods and services that most of us take for granted are out of reach: access to employment, local commercial services and affordable recreational opportunities. But poverty, as we learned during the consultations on the poverty reduction strategy, is a lack of affordable housing as well. It's both.

ONPHA supports Bill 152. The bill is precedent-setting and recognizes that poverty is a multi-dimensional issue that requires action on several fronts. It is essential that we recognize the interactions among housing, social assistance, income support, retraining programs, settlement programs and health care. All of these have a role to play in an integrated strategy aimed at reducing poverty.

ONPHA can speak to the fact that housing is relevant to poverty reduction in two important aspects. First, as the single largest expenditure in a household's budget, the cost of housing can crowd out other necessities and exacerbate an already inadequate income. Second, poverty issues often manifest themselves with the creation of concentrations of poverty, which is directly linked to housing markets and housing assistance.

In terms of housing-induced poverty, ONPHA recently released its annual report on the size of the gap between the cost of housing and incomes. This report, Where's Home? 2008, is prepared by ONPHA and the Co-operative Housing Federation, Ontario region, and looks at the state of rental housing markets and affordability in 22 key communities in Ontario. The report also looks at vacancy rates, rental housing supply and changes in rents and incomes. As you might expect, given the backdrop of the economic situation, the news is not good. On average, an astonishing one in five tenant households is spending more than 50% of their income on rent. Over 260,000 households in Ontario are choosing to either "pay the rent or feed the kids." And, as ONPHA's soonto-be-released report on social housing waiting lists shows, nearly 130,000 households can wait for anywhere up to 20 years for affordable housing.

While poverty occurs at an individual or household level, its existence becomes visible when poor families and households cluster in one geographic area. This usually happens in areas of low-cost housing. Neighbourhoods that become centres of poverty also become marginalized. Economically challenged communities bear the brunt of unemployment, business failures, family stress, crime, substance abuse, deteriorated housing and poor health. And as recent studies have demonstrated,

Clearly, a multi-pronged solution is required. Experience has taught us that programs that direct solutions only at the individual are not as likely to be as effective as programs that are directed at assisting both the individual and the neighbourhood to become stronger. The key policy challenge is to identify and implement the appropriate programs.

these communities are often racialized.

It is ONPHA's position that safe and affordable housing must be at the heart of the government's poverty reduction strategy. When people have a place to call home, they can seek and find a job, establish their children at school and maintain a healthy household.

There are three key ways that housing can assist in reducing poverty. The first is at the individual level and involves reducing housing costs through support mechanisms such as rent supplements, a housing benefit or rent-geared-to-income assistance.

The second is by using housing programs as a basis for asset-building. These programs can assist modest-income households to move from rental to home ownership and thus begin building equity. This approach, while fairly new to us in Ontario, is well established in other jurisdictions.

Finally, there is the construction of affordable housing, which can, if carefully done, create healthy and mixed-income communities such as the St. Lawrence neighbourhood here in Toronto and, of course, the revitalization of Regent Park.

It is important to recognize that different solutions belong in different communities. ONPHA strongly supports the need for local communities to identify the program that will work the best for them. Ontario needs a strategy to reduce poverty in Ontario, and one that recognizes the important role housing plays in that strategy. While the Minister of Municipal Affairs and Housing, the Honourable Jim Watson, has stated that housing-related poverty issues are best left to discussions within the province's planned long-term affordable housing strategy consultation, we believe that the link between this strategy and the poverty reduction strategy needs to be made. The logical and most appropriate place to identify this linkage is in the proposed Poverty Reduction Act itself.

Thank you for the opportunity.

The Acting Chair (Mr. Khalil Ramal): Thank you very much for your deputation. We have three minutes each for each side. We'll start with Mrs. Munro.

Mrs. Julia Munro: Thank you very much, and I'm very pleased that you were able to come today, because this is a particular aspect that I think needs to be better understood. I'm always reminded of, "You can't have a roof over your head if you don't have a job, and you can't have a job unless you have an address." I'm particularly interested in any comments that you might make—frankly, for the purposes of Hansard—on issues such as the kinds of housing models that you suggest, I think, on page 4, that you describe as asset-building—and how you might comment on that. How does it differ from co-op?

Mr. Hugh Lawson: Non-profit co-ops are—there's no equity involved in those. So with asset building, typically people are referring to affordable home ownership, programs that are designed to assist families that cannot afford home ownership right away in developing their equity in a home and so on. It's a little different; it's an individual program for individual households.

Mrs. Julia Munro: The other thing, I guess, since we're here because of Bill 152: Are you satisfied with the manner in which reporting and accountability will be done according to the bill as it stands right now?

Mr. Hugh Lawson: I don't believe we've actually got a position as an organization on that.

Mrs. Julia Munro: Thank you.

The Acting Chair (Mr. Khalil Ramal): Mr. Prue, you have three minutes.

Mr. Michael Prue: If the whole thing comes down to, in your view, the building of supportive housing, affordable housing, and that it should have been included, did you ask Minister Watson—you've named him here—to include his upcoming discussions in his poverty bill?

Mr. Hugh Lawson: Yes. We have discussed this with the minister several times, and we've encouraged the inclusion of the two issues together.

Mr. Michael Prue: But it hasn't been done.

Mr. Hugh Lawson: No.

Mr. Michael Prue: Did he tell you why?

Mr. Hugh Lawson: He said that it would be addressed through the affordable housing strategy. He suggested a separate approach was better.

Mr. Michael Prue: Did he give any rationale for that? Because it seems to me that what you're saying is logical, that it should have been included here.

Mr. Hugh Lawson: Not specifically, no.

Mr. Michael Prue: You have no specific plans for reviewing this legislation? We've had other deputants come forward over the course of today suggesting that the review panel ought to be at arm's length from the government, not just be government appointees to, in the end, say what a good job the government's done. That's what often happens around here.

Mr. Hugh Lawson: Typically, in our consultations with our members, we do it with our members, not with people who represent our members. So following that principle, we would appreciate it being done with the

people who are affected.

Mr. Michael Prue: And how do you propose the government should choose these people? As an example, should they choose someone from your organization to sit on the review panel?

Mr. Hugh Lawson: As I said, we don't have a position, but it might make sense to include people who are living in social housing, whether it be co-ops or non-profits.

Mr. Michael Prue: Not the people who run them but the people who live there?

Mr. Hugh Lawson: I believe that it's important to include the people who are directly affected by the decisions that will be made as a part of this act.

Mr. Michael Prue: Thank you.

The Acting Chair (Mr. Khalil Ramal): The government side, Mrs. Van Bommel.

Mrs. Maria Van Bommel: I just want to go back to—Mr. Prue has repeatedly talked about how this review would be a patting on the back of the government. But I'm not sure—I think maybe we need to clarify something as to what the intent of the review really is. I think the intent, if you look at the legislation, is that the review is to move the whole strategy forward and talk about what's going to be the next strategy, not just to say, "Well, that's nicely done, you know. Over and out."

In the same vein as Mrs. Munro, I'm really intrigued by your asset-building comment and the idea of a rent-to-own kind of process. I think everyone would agree that, in terms of building self-worth in all people, ownership of property is a very important part of that, having something of your own. But how would you see that being financed? Would it be guaranteed loans? How would you proceed with that part of it?

Mr. Hugh Lawson: There are a number of techniques that are currently being used to do the financing. They are second mortgage take-back and limiting the equity that a person can actually gain from that, so that some of the equity goes back into a fund and then some of the equity goes back to the individual.

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But any of these programs can only work for a pretty small percentage of the people who are affected because you do need to be able to invest something. If you have an average family income, like we do at Toronto Community Housing, of \$14,000 a year, it's pretty hard to invest anything.

Mrs. Maria Van Bommel: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Van Bommel, and thanks to you, gentlemen, for your deputation on behalf of the Ontario Non-Profit Housing Association.

SISTERS OF PROVIDENCE AT ST. VINCENT DE PAUL

The Chair (Mr. Shafiq Qaadri): I will now move to our next presenter, Sister Pauline Lally. I invite you, Sister Lally, to please come forward and begin your deputation on behalf of the Sisters of Providence at St. Vincent de Paul.

Interjection.

The Chair (Mr. Shafiq Qaadri): We'll of course have that distributed immediately.

You have your 15 minutes, so please begin now.

Sister Pauline Lally: Mr. Chair, members of the Standing Committee on Social Policy, thank you for this opportunity to speak with you this afternoon.

I'm Pauline Lally, a Sister of Providence of St. Vincent de Paul from Kingston. We Sisters of Providence of St. Vincent de Paul in Kingston trace our roots to a group of dedicated women religious who began our mission in the mid-19th century. Back then our sisters, like so many other religious orders of women, set about working on behalf of the orphaned, the sick and the aged. This was the service, the work of charity, and charity is a bit of a handout. This is not why we are here today. We are not looking for a handout for the poor; we are looking for justice for the poor. Of late, we sisters have combined our service of charity with the work of justice and even set up an office of justice and peace and integrity of creation.

One of my earliest learnings when I was asked to be director of the office was that poverty is political. It is often not by chance that people are poor. Poverty is not necessarily the result of individual moral failure or poor life choices, but of governmental policies. And poverty is a nightmare. We sisters learned that we have to be political, though not in the partisan sense. We have to be attentive to what is going on, think critically and be responsible by learning to be a voice for the voiceless.

A society is judged, as you know, by how it treats its most vulnerable. A society is as strong as its weakest link. What affects one person in Ontario affects all peo

ple in Ontario. We congratulate this government for taking poverty in our land seriously. Bill 152 is a beginning.

In 1995, our justice and peace office started a vigil soon after the government of that day cut social assistance payments by 21.6%. We felt compelled to claim public space in front of city hall every Friday noon. We made this public statement because we believe that targeting our most vulnerable neighbours is unjust. It is a serious mistake to base social policy on blaming the weak for the problems we have. Besides, as you know, investments in social programs are investments in people.

The most attractive places to live and invest are places that are socially inclusive.

We have continued our vigil for 13 years. That's because the incomes of our weakest and economically marginal neighbours have never recovered from the loss that they suffered in 1995.

We have also continued our support for the Interfaith Social Assistance Reform Coalition, known as ISARC, and its lobbying efforts here at Queen's Park. In the weeks before the budget, the Kingston vigil-keepers chartered a bus to join ISARC's prayer vigil. Together we prayed that you and your fellow legislators would have the strength and courage to finally do something serious about social justice in Ontario.

This is not the first time we have appeared before a committee of the Legislature. We have made regular submissions to the Standing Committee on Finance and Economic Affairs. Our appearances before that standing committee have of course focused on the need to make more significant investments in measures proven to be effective in poverty reduction: higher minimum wages, a comprehensive affordable housing program, child care and early childhood education, and dental care accessible to all. These are among the measures that we had in mind when we stood outside this building on a cold March day this winter praying for you and your colleagues, in hope that serious investment in poverty reduction would be included in the budget.

Today we are not urging that Ontario's government make a decision to allocate significant funding for social justice, though we might not stop that. On the contrary, we simply request some important changes to this important law. We are asking that you change the proposed Poverty Reduction Act so that any future government, no matter what its political stripe, will be accountable to the people of Ontario with respect to poverty reduction.

How to do this? Firstly, we believe that Ontario's poverty reduction efforts must be as inclusive as the society that we hope to help build. This inclusivity means that the Bill must go beyond simply promoting strong communities, families and children. As you've heard today from other presentations, adults make up three of every four people living in poverty in Ontario. We believe that making a distinction between poor children and poor adults is the same as the old Victorian distinction between the "deserving" and the "undeserving" poor. Such an approach is morally bankrupt.

We Sisters of Providence arrived in Kingston in the middle of the Victorian era. We began exhausting and humiliating "begging tours" to raise money for the poor. We made no distinction between the "deserving and "undeserving" in the 1870s, so why should we do so now?

Secondly, Bill 152 needs to go beyond noble sentiments. It must be enforceable. Remember in 1989 how the federal government unanimously resolved to end child poverty by the year 2000? It was a sweeping statement, a noble sentiment with few teeth. We have more poverty today than when that statement was made.

At this point you may be thinking that I'm a wellintentioned but naive nun who thinks that she can end poverty with the stroke of a pen by passing a law—far from it. Our community has made common cause with many of the other groups that are appearing before you. We know that it is only through sustained, organized public pressure that governments make real changes in policy, including social policy. How did women get the vote? How did workers get the right to organize and bargain collectively? How did Ontario secure laws that protect our natural environment? We achieved those important gains through long, hard organizing efforts.

How did Ontario move towards a poverty reduction strategy? Why are you now deliberating about a Poverty Reduction Act? True, in part, because legislators summoned the political will to begin to address the savage inequalities that rend our communities. But we have also come this far because of a sustained public awareness campaign.

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Our community has made its own modest, local contribution by standing outside our city hall, which incidentally is the first Parliament building of Canada, every Friday for 13 years in all kinds of weather. We've numbered from two to 500. We attend ISARC's Religious Leaders' Forums in this building. We stood with others in ISARC's interfaith prayer vigil this winter.

Such education, lobbying and organizing efforts can be helped by laws like Bill 152 if they include what we believe are simple, friendly amendments, such as those proposed today by the 25 in 5 Network and ISARC, among others.

In the end, it will be up to groups like those appearing before you today and tomorrow to hold future governments accountable. If future governments are to continue the work of poverty reduction, groups like our Kingston vigil keepers need regular and reliable yardsticks by which Ontario's progress in the area of poverty reduction can be measured.

Ontario has an Auditor General so that we can assess how well public monies are spent. We have an Environmental Commissioner to give us report cards on the state of the natural environment. Speaking of report cards, I taught for many years and gave tests, but the students didn't mark the tests.

We need an independent officer of the Legislative Assembly who can report on the state of the social environment. We need this social Ombudsman who can prepare the annual reports on progress in poverty reduction already stipulated in Bill 152. These reports must be independent from the government of the day. They must be delivered to the Legislature every year. This will allow groups like ourselves to praise and/or pressure future governments. This, as you know more than I, is the stuff of politics.

Thirdly, Bill 152 stipulates that the government of Ontario's poverty reduction strategy be evaluated every five years and a new strategy put in place. This is a laudable measure. These strategies are crucial. We need goals and measurements, benchmarks against which we can measure progress. But we think that Bill 152 should be amended so that an arm's-length body, not the govern-

ment of the day, conducts the five-year reviews that will shape the poverty reduction strategy over the course of the subsequent five years.

We hear a lot these days about two words. They inform public discussion of government policy, including social policy. Those two words are "accountability" and "transparency." We hear them in our congregation too. They are repeated so often that sometimes it seems we lose sight of their importance.

We believe our suggestions for improving Bill 152 reflect the need for future governments to be accountable with respect to poverty reduction and transparent in measuring progress towards that important goal.

Finally, a word about poverty reduction: Our goal should go well beyond poverty reduction. It should be poverty eradication. Persistent poverty in a place as rich as our own is a moral and ethical stain on our social fabric.

The other night at prayer I read from Psalm 41, and it reads in part, "Blessed are they who consider the poor ... they are called blessed in the land." The psalm even goes on to say that those will be "sustained on their sickbeds." What a wonderful promise to you who are about the serious consideration of the poor in our land.

In closing, I will simply repeat something that a woman far more dedicated than I said many years ago. Jane Addams was the first American woman to win the Nobel Peace Prize. Her words adorn the little pamphlet we hand to passersby each Friday noon. She says, "The good we secure for ourselves is precarious and uncertain until it is secured for all of us and incorporated into our common life." Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Sister Lally, for your extraordinarily precisely timed remarks, and thank you for your deputation and presence here today.

ALLIANCE FOR EQUALITY OF BLIND CANADIANS

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter, Mr. Rae, first vice-president of the Alliance for Equality of Blind Canadians. If you could please be seated. Welcome, Mr. Rae, and your time begins now.

Mr. John Rae: Thank you, Mr. Chairman, members of the committee. The Alliance for Equality of Blind Canadians greatly appreciates the opportunity to appear before you this afternoon to talk about Bill 152.

The AEBC is an organization of rights holders who are blind, deaf-blind and partially sighted. Our work focuses primarily on public awareness in an effort to change the climate of attitudes towards people who are blind, deaf-blind and partially sighted and offering comment on issues of public policy that are important to our community. Clearly the fight against poverty is one such issue.

I want to begin by commending the government for introducing Bill 152 and for enshrining a fight against poverty in legislation. This is new in this province, and the government deserves to be commended for going this far. But we must go much, much further. Since the very beginning this afternoon, you have heard presentation after presentation by deputants who have called for a variety of amendments to Bill 152. There has been an amazing unanimity on the part of these various deputants, and we want to support those recommendations as well.

In particular, you have heard how disappointed the disabled community was over the government's poverty reduction strategy because of its focus on children. For our community, many persons with disabilities do not have children. Many people become disabled later in life. Those individuals may have had children or may not have. Many of those children have left the nest. Unless I miss my guess, unless things have dramatically changed today since I left home, most children live as part of families. So we seek a more holistic approach.

We also support the notion of changing the thrust of poverty reduction to poverty eradication or developing a poverty-free province. If we don't do this, the bill sets us up to fail. In a province like this, if poverty reduction is the best we can hope for, if that's as much as you're going to put in legislation, haven't you failed before we start? That's not what Ontario is like, I don't think.

We also call upon a clear, understandable and transparent process of review. Part of that must involve tabling all reports before the Legislature. That will give the citizens of this province an opportunity to judge what progress has been and is being made. It will also remind all members of the Legislature what progress has been and is being made so you, who are members of the House, will not forget that poverty must be a part of your everyday thought process and everyday work. It must not be confined to the work of this committee; it must not be confined to this bill. It must be part of everything the government of Ontario does.

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I'm getting older, like most of you, and as such, I'm becoming a bit impatient to see change. I have a long memory. I've been involved in this work for 35 years. I have lived in this province under governments led by all three of your distinguished parties. During my 23 years as a civil servant, I worked under administrations led by all three of your parties. I have heard many statements from all three of you. I have seen many reports produced by the federal, provincial and municipal governments. And what do I find? I'm not happy about this; I'm sad about this. We in the disabled community remain chronically unemployed and are expected to subsist on the margins in chronic poverty, and it's time that stopped. It is long overdue.

One of the reasons this is the case, I submit, is that we have not been nearly involved enough in the development, and particularly in the implementation, of programs, policies and legislation. These are developed about us, but they're done without us. So, if I were giving out report cards, I have to admit that I've got enough Fs to give all of you. You've all failed the disabled community—all three of you.

Think about today. How many members of this Legislature from all three of your parties have a disability? How many? How many people with disabilities work for your parties? How many persons with disabilities are deputy ministers? How many persons with disabilities work as senior policy analysts? Those are the areas of power where policies get developed and delivered, so it's perhaps understandable why we continue to live in the chronic level of deprivation that is our lived experience, and that's got to change.

It's not so easy. Even long before the notion of thinking outside the box was talked about, the federal government, way, way back in 1981, developed the first of a number of landmark reports in this country. It was called Obstacles. It was part of the work done during the International Year of Disabled Persons, which incidentally had the theme: Full Participation and Equality. Twenty-eight years later, how far have we come? We've come part of the way but not nearly very far. We sure haven't got to full participation and equality; that's for damn sure.

But they did something differently. The politicians who travelled the country to consult people added to their midst a number of well-respected, well-known people with disabilities. They travelled with the politicians across the country. They were part of the drafting process of that report. It's a report that I think is internationally recognized as a leader. The Andy Scott task force proceeded similarly and produced a great report.

Great reports are not enough, of course. That's not to say that we don't have non-disabled champions, because we do have some—some among all of your parties. I particularly want to refer to Dr. Bountrogianni, the former Minister of Citizenship and Immigration, who was instrumental in and led the process that resulted in the AODA, a piece of legislation that was different, a piece of legislation that was supposed to change our lives, a piece of legislation that isn't getting nearly where we hoped it might, because ministers change, champions leave and pieces of legislation get moved to other places to get administered.

The accessibility directorate is now housed somewhere in the huge Ministry of Community and Social Services, where it doesn't have nearly the prominence it had when it was in its former smaller ministry. What do we see? We've seen the first standard, customer service, woefully inadequate. We've seen a transportation standard, currently out for debate, that the disabled community basically says doesn't even meet the requirements of the Human Rights Code. I say shame. Shame on this process. It would have happened better had more people with disabilities been involved from step one throughout all aspects of any process that has anything to do with us. I submit that our situation might be better.

That's why the AEBC has called upon all governments to develop a coordinated, comprehensive economic strategy. You notice I don't call it an employment strategy; I don't call it an income strategy. I call it a comprehensive economic strategy, which will deal with

three pillars: One is social assistance; the second is labour market involvement, which is chronically needed; and the third is infrastructure funding that the federal government included in its last budget.

Some of that money must be used to make our colleges and universities more accessible, some of that money must be used to add to the availability of affordable and accessible transportation, and so on and so forth. We need a disability lens so that every piece of legislation, every ministry, every policy that is being developed takes into account the needs of Ontarians with disabilities. After all, we're not an insignificant part of your community and of this province. We're about one in seven members of this province, and yet it seems like our society continues to expect us to remain on the margins, in abject poverty, and that is just not good enough.

So I submit that, yes, this bill is a good start; yes, this bill needs to be amended and expanded. But my greater concern is, what happens after this bill is passed, as passed I'm sure it will be and should be?

I'm more concerned about what you folks can do to make sure rights-holders—you notice I make the distinction that we who live the life, we who have a disability—our organizations; groups like the Colour of Poverty, made up of people who are racialized members of our community; the Chiefs of Ontario—are rightsholders. We're not merely stakeholders. Sure, we have a stake in what happens; that's true. But there must be a distinction between stakeholders—those groups that, yes, have an interest—and rights-holders, those of us who are consumers, who are individuals who live every day the experience of having a disability, of being a person of colour, of living either on a reservation or as a native person in an urban setting: rights-holders. Those organizations must not just be consulted, but must be seconded, must be hired on contract, to be a part of the process.

Groups like AEBC, the ODSP Action Coalition and, I'm sure, the Colour of Poverty and similar groups would be very pleased to recommend individuals who could play the kind of role I'm speaking about: people who are knowledgeable about poverty; people who have experience in developing policy change; individuals who are leaders in their communities and have an understanding of the broad issues that confront us.

Working on one issue has been a common problem with government: You focus on one thing. Well, that's not good enough. There's an interrelationship of issues. It's one thing to have found a job, but if you don't have a place to live, if there isn't transportation in the community where you live to get to and from that job, then finding a job can be a fairly elusive proposition; similarly, if a particular employer is not prepared to discharge its legal duty to accommodate our needs, if we can't get timely access to textbooks that we need and so forth. There is an interrelationship of issues.

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So fighting poverty is not just about passing a bill. This bill is symbolically, and I hope substantively, important. It needs amendment. But what is more im-

portant, members of the committee, is what happens after the bill is passed and what you do to bring groups like mine, who have historically been relegated to the margins, into the mainstream. I hope, before my life ends, that that promise back in 1981 of full participation and equality that sounded like such a wonderful phrase way back in 1981-

The Chair (Mr. Shafiq Qaadri): Mr. Rae, you have about 30 seconds left.

Mr. John Rae: Okay, my last sentence—that that phrase, "full participation and equality," will become the lived experience of the bulk of Ontarians who today have a disability and those who will come after us. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Rae, for your presence, your written submission and your very passionate remarks.

THUNDER BAY AND DISTRICT INJURED WORKERS SUPPORT GROUP

The Chair (Mr. Shafiq Qaadri): I would now like, on behalf of the committee, to invite our next presenter, Mr. Mantis of the Thunder Bay and District Injured Workers Support Group. Mr. Mantis, you've seen the drill. You have 15 minutes in which to make your combined presentation. The time remaining will be divided evenly amongst the parties for questions, and I invite you to officially begin now.

Mr. Steve Mantis: Thank you, Mr. Chairman, and thank you to the committee members. I see some familiar faces around the table.

You know, I don't know where to start. I'm like John Rae. I've been doing this-not as many years; I've only been doing this for 25.

I come from Thunder Bay. It's a small community. Sometimes we figure we're not even noticed down here in Toronto. Our group, the Thunder Bay and District Injured Workers Support Group, was started 25 years ago to try to participate in the process of how laws are made and how the system works, or doesn't work, for workers who end up injured and disabled.

I can't figure out why, when I look at this bill-which, you know, on first reading you get all excited; there are these wonderful principles of what we should do. Yet to my best judgment, workers who become injured and face poverty aren't included. Why is that?

There is, I think, a responsibility on government to try to ensure that the systems we put in place for our citizens work effectively, and excuse me, maybe I am a bit jaded, you know? For 25 years—it's been over 30 years since I lost my arm at work-I've been meeting people whose lives are ruined because of their injury and their interaction with one of the government's bodies, the Workers' Compensation Board. I go, "Where do we go here?" Is there not an opportunity to put the house in order all the way across the government bodies?

When we look at setting targets and at measuring and reporting, this is what our group has been asking for for our 25 years. As recently as this year, I had discussions

with the Minister of Labour to ask him to ensure that the compensation board would look at what happens to workers after they become injured. Now, what I'm talking about is people with a permanent disability, people like me-well, it's all different disabilities, but you may not know how many of us there are in Ontario who were hurt at work and have a permanent disability. Right now it's approaching 400,000 400,000 workers who have been injured seriously enough that their disability lasts them the rest of their lives.

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What happens to those? We would think that the system that is there to look after and help people would have that answer. In fact, it doesn't. In fact we have, as I've been saying, been lobbying for all these years and they've never seen-all the governments of the day, all three governments, have not put in place a mechanism to actually keep track of what happens to people. So we've done research; we've seen it anecdotally. We see that the percentage of people who are still employed following a workplace injury permanent disability resembles the national and provincial average. About two thirds of the people who have a disability are unemployed. If you're unemployed in Ontario, you're probably living in poverty.

Why are we excluded? I look at the principles. Subsection 2(2) in the law here says "Principles" and we start with:

"Importance of all Ontarians

"1. That there is untapped potential in Ontario's population that needs to be drawn upon by building and establishing supports for, and eliminating barriers to, full participation by all people in Ontario's economy and society."

So, every year we have 14,000-15,000 last year or 15,500—workers who have a permanent disability from work, and the majority of them are going to end up unemployed. Is that how we fulfill our potential? Here are people who have a work history, work experience, who were adding to the economy, and they're going to end up in poverty because they got hurt at work? Is that what we call the importance of all Ontarians?

"Importance of communities

"2. That strong, healthy communities are an integral part of our poverty reduction strategy; their potential must be brought to bear on the reduction of poverty."

I can tell you about the injured worker community. People feel so left out. I'm an optimist, and I get criticized, "Oh, you can't believe the government's really going to do something now, eh? You can't believe the compensation board is really going to do something." I spent the morning at the compensation board, the WSIB, trying to get our message across. Little steps are being taken, but throughout that time—and I report back to our organization-people say, "Where are you going with that? You're wasting your time. Look what they've done to us."

I got an e-mail last Thursday from a person I've never met before. Because I'm active, I've got a profile, I'm on the Net. On page 4, just a little quote—I took it right out

of my e-mail. The fellow says, "I've been injured since 1997 with two back surgeries, lower. I am going bankrupt soon. Severe depression and stress all related to my back pain. Injury has moved up to my upper back and neck. I can barely do normal, everyday activities. I've been in treatment for self-medicating myself on alcohol and drugs. I have two children, five and seven months old, that suffer for me. Me and my wife are at each other's throats. I would love to tell my whole story to you. Please, please, contact me. I don't know what to do. I can't take this stress no more."

We hear this all the time. Here we have a system that is supposed to help people to recover following injury, and this happens far too often. You'll see above these bullets with our percentages. We did a little survey in Thunder Bay. Our group is all volunteer. We get no government funding. We got cut off because we spoke out under the Harris Conservatives. But we did a survey last year and it's in your package, our little report: 71% reported living under the poverty line—71%. These are all people who were working; 42% are receiving welfare; only 18% receive any WSIB benefits. These are people who are hurt, disabled for life, mostly unemployed; 15% are working, 63% are depressed and 15% have contemplated suicide.

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In northwest Ontario some years ago, we saw that suicide was a big issue and we started just trying to keep track, just following the newspaper now and again. In the first year, we would see one a month in our local newspaper, people who had committed suicide who were struggling with the compensation system. We got too depressed; we quit keeping track. So I look at this bill and say, "Oh, my gosh, look at these wonderful things that the government's now going to do. It's actually going to look at this stuff and it thinks we're important, that we should be consulted, that we should be involved." But are we?

This morning when I was at the WSIB I asked one of the senior vice-presidents, "Are you going to be subject to the provisions under Bill 152, the Poverty Reduction Act?" "No, we don't think so," she said. "I was just talking to our president a little while ago and she said, 'I'm so surprised; no one's talked to us at all about this. This isn't, I guess, anything that's going to affect us." Here I'm looking at an opportunity for the government to actually set targets, but let's set them right across the board. It's interesting, the groups that are mentioned here. Of course, people with disabilities—that's who we are. But among our groups, new immigrants are at high risk; women are discriminated against; racialized communities are at higher risk of injury and a lower risk of actually receiving any kind of benefits. So the groups that are mentioned and designated within the legislation are very much reflected in our organizations.

The Sister who just talked about poverty talked about poverty as political. In the last 10 years, we've seen assessment rates, premiums—whatever we call themthat are paid by employers into the workers' compensation system decrease by over \$1 billion a year. Now wait a second; help me out here. Workers are hurt at work. The research shows that most of them get no compensation, long term; short term, yes, the system works pretty well. If you're long term, the chances are that you're not going to be on any kind of benefits. And so, the employers of our province are getting a break. I guess that is political. I guess someone's making a decision here that it's more important to reduce the employers' costs by over \$1 billion a year and subject workers to a life of poverty, depression, families breaking apart. You're saying, let's address poverty, but you've got an institution that is causing it and causing the ravages of poverty. I have to shake my head. I'm going, "Who do I believe? What do I listen to? Are people sincere, or do they not know?" I don't know. I'd like you to help me out.

There's this stigma out there that injured workers are cheaters, that they're fraudsters. We hear it all the time. We hear stories all the time. But we see the hardships and we see that most of these people are in poverty. I'm sure there are some people who take advantage of any system. But why are we all labelled that? Why is there a campaign that we're labelled that and then the government passes laws, one after another, that reduce the access to benefits? I guess there's a political process that takes place here. We don't have the power and we don't have the political clout that other big businesses have. We can't afford lobbyists.

So we've been trying to do research. We've been trying to document this. We've formed a Community-University Research Alliance with a number of academics and are beginning to document these things that we know and have seen year after year and that the government and the compensation system have refused to actually look at and document as well. We hear about transparency and accountability, right? Where is it? Where is the accountability for government systems that are supposed to achieve a goal, but we don't measure whether in fact they do or not?

John Rae talked about having people with disabilities and people affected as part of the process. How effectively do you do that? People have looked into this and researched it and we need to support community groups. In my 25 years, I have seen the government support to community groups go down and down. If you do any kind of political advocacy, forget it. That becomes a no-no. But that is a cornerstone of our democracy. It is citizens participating in the process. If you're poor and you can't afford bus fare to participate in the consultation, where are you at? How do you do it? How do you participate when you have to choose between giving food to your kids and spending the five bucks round trip to go to a government consultation?

I guess there's about two minutes left?

The Chair (Mr. Shafiq Qaadri): One.

Mr. Steve Mantis: Okay, well, I guess there's no room for questions.

I will ask you once again, why are we excluded? Is there not something you could do as a committee to

entertain amendments, to bring forward ways so that the intentions that I hear expressed in this act are put into practice, that the other bodies or agencies, boards and commissions that deal with our public—and particularly for us, the WFIB—are required to set goals to reduce poverty, to measure those and to be held accountable for that?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Mantis, for your presentation and presence on behalf of the Thunder Bay and District Injured Workers Support Group.

MARCH OF DIMES

The Chair (Mr. Shafiq Qaadri): I would now invite our next group of presenters: Mr. Steven Christianson, manager of advocacy and government relations, and colleagues, I presume, with the March of Dimes. I would invite you to please first of all come forward, be seated and introduce yourselves as you speak. I'll let you get settled before the official time begins. Thank you. Please begin.

Ms. Janet MacMaster: Good afternoon. My name is Janet MacMaster. I coordinate government relations at the March of Dimes. With me today are my colleagues Steven Christianson, national manager of government relations and advocacy; Bobbi Moore, March of Dimes advocate; and Frank Nyitray, our associate. We are most appreciative of this opportunity to speak to Bill 152, the Poverty Reduction Act.

I would like to start off by stating that March of Dimes supports the principles and goals of Bill 152 and the government's intention to tackle poverty in Ontario in a substantive and measurable way. Of course, we bring a somewhat different perspective on what poverty actually is for someone with a disability and we will explain this in a moment, as well as highlight areas that we feel could enhance Bill 152. While the initial focus will be on children, a move we applaud, the bill does make specific reference to disability, and appropriately so. Disability can affect anyone, at any age, at any time. It may be present at the time of birth, the result of an injury or illness or simply part of the natural aging process. We are very happy to bring our perspective to this committee.

First, let us give you a brief overview of March of Dimes. Frank, please?

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Mr. Frank Nyitray: Thank you Mr. Chairman, members of the committee. My name is Frank Nyitray. I am a person with an invisible disability, so this will have an effect not only on me but on many other people as well.

In nearly six decades, March of Dimes has evolved from a resource-focused organization, raising \$14,000 in 1951 to eradicate the threat of polio, into an organization with an annual operating budget in excess of \$90 million, with which we provide a diverse range of services to help more than 40,000 consumers across Canada live independently and participate in community life.

This evolution reflects our commitment to a strategic approach of identifying need, overcoming obstacles,

adapting to change, and embracing emerging opportunities to improve the lives of the people we serve.

Who are the people we serve? When one looks at our consumer base, one begins to get a perspective of the relationship between disability and poverty. Disability and poverty often go hand in hand. Eighty per cent of March of Dimes consumers have personal incomes of less than \$20,000, and 91% have incomes below \$30,000. A staggering 40% of the people we serve, based on data from the 2007-08 fiscal year, have incomes of less than \$10,000 per year. I repeat: 40% from the 2007-08 fiscal year are living in the city of Toronto, as one example, with less than \$10,000 per year. Seventy-two per cent of service expenditures of the March of Dimes assist people with incomes below \$20,000. Sixty-five per cent of our consumers are over the age of 55, while 2.5% are under 19 years old.

According to government statistical information on the website for community and social services, 1.85 million people in Ontario have a disability, and nearly half—49.5%—between the ages of 15 and 64 are unemployed.

Mr. Steven Christianson: It's safe to say we know quite a bit about poverty and its relationship to someone who lives with a disability.

I want to emphasize that when we speak of poverty, we mean social as well economic conditions. To this degree, we are pleased to see reference in the bill to the importance of communities and families. We are pleased to see benchmarks such as dignity, respect and participation in the planning and public policy process. As we've mentioned, these principles and goals are laudable.

Will it work? Let me reference a few words—of course, they've been referenced before our presentation—found in the bill:

"Importance of all Ontarians

"1. That there is untapped potential in Ontario's population that needs to be drawn upon by building and establishing supports for, and eliminating barriers to, full participation by all people in Ontario's economy and society."

Those words are flagged for us. "Supports" and "barriers" are also key terms and concepts that we at March of Dimes are very familiar with. The success of this legislation will ultimately be found in those very supports and the barriers they help eliminate.

We know what works in our world. We've consulted widely in other jurisdictions to know what works around the world. For Bill 152 to tackle poverty in a sustainable way for people with disabilities, we know that one of the supports we're going to have to build will involve two things that facilitate participation in community, independence in one's home, and greater involvement in the society and the economy. Those two things are home care, or what many refer to as caregiving; and home modifications. Most importantly, the two need to be treated as interrelated. Let me explain.

Today's emerging and growing need for caregiving supports and home modifications for people with disabilities, especially physical, both of which need to be formulated as a caregiving strategy, require new solutions, solutions that require the expertise and program design feedback not just from one ministry, not just from one program branch, not just from one service delivery agency, but many.

In order to develop everyday solutions, we'll require the expertise of many disciplines and perspectives to breathe life into the work that will turn this bill into a reality. That is ultimately not just reducing poverty but preventing it. For Ontarians with disabilities, in our experience, as well as in the experience from many jurisdictions around the world, a caregiving strategy that includes home care supports and home modifications that meet and anticipate societal need reduces the cost to government and helps reduce and prevent individuals and families from living in poverty.

I mentioned the fact that we consider other jurisdictions because Ontario is one of the very few without such a comprehensive caregiving strategy that supports home care and home modifications.

We are making progress on a number of fronts, notably the Accessibility for Ontarians with Disabilities Act—we still have hope in that—as well as several measures announced in this year's budget. But a strategy put in practice to address, alleviate and prevent poverty among Ontarians with disabilities, as well as their families and caregivers, must necessarily recognize the fact that the need for such supports today exceeds the available supply of program dollars, and the need is growing each year.

Since 1999, March of Dimes has administered the home and vehicle modification program. Many of you are familiar with it. It's a program that provides financial assistance to Ontarians with disabilities to install such things as door openers, ramps, lifts, grab bars in a washroom. These modifications allow someone to remain in their home, in their community. In the 2008-09 fiscal year, we had to reject nearly 50% of all applications, not because the applicants were ineligible, but due to lack of funding. The bottom line is that a home modification can allow greater independence. For example, a spouse can continue working as opposed to having to reduce work hours to care for the spouse with a disability. You begin to see some of that relationship to poverty.

Delivering care to someone in their own home is not only less expensive than long-term or chronic care, it's simply a better option that provides greater quality of life. A high quality of life is a very effective measure against poverty.

I'm now going to ask my colleague Bobbi Moore to speak to the specifics of Bill 152. We only have a couple more minutes, if that's okay.

Ms. Bobbi Moore: We feel that section 5, under the title "Regular consultation," is not specific enough. We feel that there should be clearly established time frames as a starting point for regular consultation, then an additional provision of additional times to meet, as considered appropriate by the minister. We recommend that specific reference be made to the following: an annual

meeting of an advisory body, with cabinet representation, be charged with identifying the champion programs or services that sector and cabinet representatives deem most effective in tackling and alleviating poverty.

Bill 152 identifies a number of specific populations, such people with disabilities, immigrants, and women, and we feel it appropriate to consult annually with key stakeholders in each of these groups.

As regards Ontarians with disabilities, we look to the AODA with hope. Herein is the legislation that will remove the barriers to participation and inclusion, the very barriers that can and often do lead to poverty, the barriers to employment, to housing and to adequate personal supports. We recommend incorporating a reference to the Accessibility for Ontarians with Disabilities Act in Bill 152 for people with disabilities.

The initial focus in this bill—and a principal goal—is on children. We applaud this focus. We recommend that an equal ongoing focus will tackle poverty in other populations. To that end, we feel that the minister charged with responsibility of this legislation be referred to as the minister responsible for Ontario's Poverty Reduction Strategy. Disability can hit anyone at any time, and with that, so too can the increased chances of living in poverty.

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Hopefully, our collective efforts will lead to new programs, policies and, most importantly, everyday solutions that we can continually revisit and critique to set in motion a path of ongoing improvement in the polices and programs that affect our lives and ensure that all Ontarians, particularly those in more vulnerable populations, participate in all aspects of our society and economy.

Honourable members, thank you for this opportunity.

The Chair (Mr. Shafiq Qaadri): You have literally 30 seconds each. Mr. Prue.

Mr. Michael Prue: Thirty seconds: I just want to congratulate you. Good presentation.

The Chair (Mr. Shafiq Qaadri): Government side, Mrs. Van Bommel.

Mrs. Maria Van Bommel: Absolutely. In 30 seconds, there's hardly anything to say but thank you very much for your efforts in bringing forward your suggestions and your thoughtfulness on the whole bill.

The Chair (Mr. Shafiq Qaadri): Mrs. Munro.

Mrs. Julia Munro: Yes, I just would also echo the appreciation, because it's clear one size does not fit all.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Christianson, Ms. MacMaster, Ms. Moore and Mr. Nyitray for your deputation on behalf of the March of Dimes of Canada.

HOUSELINK COMMUNITY HOMES

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenters to please come forward: Ms. McMurdo and Ms. Berlyne of the Houselink Community Homes. As you've seen, you have 15 minutes in which to

make the combined presentation. The clerk will distribute your written deputation. I would invite you to please begin now.

Ms. Naomi Berlyne: We'll just introduce ourselves. My name is Naomi Berlyne, and I work as a community development worker at Houselink Community Homes.

Ms. Susan McMurdo: I'm Susan McMurdo. I'm a person who lives with mental illness and I live in Houselink housing.

Ms. Naomi Berlyne: I'll just first explain what Houselink is. Houselink Community Homes provides supportive housing to people suffering from mental illness. We have housing for approximately 400 psychiatric survivors in Toronto. Most of them are single adults. All of our tenants are very low income. Most of them survive on the Ontario disability support program, ODSP. Thus, they are enduring the double challenge of dealing with a mental illness and dealing with poverty.

We applaud the government for taking on the commitment to reduce child poverty by 25% in Ontario. This is an encouraging first step. We do, though, have a number of concerns about the strategy and about Bill 152. Because of time constraints, I'm just going to mention two of them for now.

We're aware that the government's anti-poverty strategy primarily focuses on children and that the government's goal is to reduce child poverty rather than poverty in general. This leaves out a very large number of people living in poverty. The message this omission gives us is that once a poor child reaches the age of 18, they don't really matter anymore.

Most of our tenants are single adults; they're not part of a family. Almost all of them cannot work, or if they can work, they can only work very part-time hours. They are dependent on ODSP, whose rates fall far below the low-income cut-off. For almost all our tenants, their disability is permanent, meaning they're basically condemned to a lifetime of poverty.

Thus, by leaving out low-income individuals like the ones we work with, the government is giving out the message that poor adults without kids, including those with disabilities, really don't matter. We're asking that you include all poor people in this bill. Specifically, in section 2, paragraph 7 of the bill, its says, "a sustained commitment to work together to develop strong and healthy children, families and communities is required...." We ask that the wording of the bill be changed to include the words "adults" or "individuals" along with the terms "children" and "families."

For my second point, I also want to comment on another aspect of the bill, namely when it mentions that regular reviews on the government's progress on poverty reduction will happen every five years. Currently, the bill asks a minister to undertake a review every five years. We support the idea of there being a regular review; that's great. However, we believe that if this review is to be effective and impartial, it should be undertaken by a body that's independent of the government. It makes no sense for the government to review itself. Furthermore,

this independent body that will conduct the review should include those who are closest to the issue, including those who have the direct experience of poverty, as well as organizations who work on the front line.

To conclude, at least my piece, we look forward to the passage of this bill with certain amendments, including those we have suggested, and we look forward to this bill having the effect of substantially reducing poverty for all Ontarians, children and adults alike.

Now I'll turn it over to Susan.

Ms. Susan McMurdo: Thank you. My name is Susan McMurdo. I am a ODSP recipient and a person who lives with mental illness. As vice-president of Houselink's board of directors, I am aware of the challenges faced by our tenants who are heads of families raising children in circumstances of disability and poverty. They deserve supports to help them and their children realize their full potential, and they need the elimination of any barrier that might prevent their full participation in Ontario's economy and society. We know that the future of all Ontarians will be strengthened when Ontario's children and their parents break free of the cycle of poverty.

In that much, I am in agreement with the focus of the proposed Poverty Reduction Act. Families need safe, affordable and stable housing so that children can enjoy continuity in their education and a feeling of belonging to a community. They need high-quality nutrition to foster the growth of healthy, attentive minds and strong bodies. They need to be able to dress in a way that keeps them warm and will not stigmatize them in the company of their more fortunate peers, and to share in the healthful recreational opportunities that enhance the lives of those who are not marginalized by poverty. Children deserve to be treated with dignity and respect, but I would like to urge the inclusion of Ontario's disabled population as equally deserving of support, respect and dignity.

At Houselink, we practise a philosophy of recovery. We believe that people can and do recover from the effects of mental illness. With the right supports, there is no telling where a person's potential may lead him or her. Ontarians who live with mental and physical disabilities are a great source of unrealized potential in their communities. If they are afforded the benefits of stable housing, good nutrition and recreational opportunities, and given educational opportunities to help them better realize their untapped potential, Ontario will achieve a new vision of integration into and diversity in its communities. Then, and only then, will the disabled receive the respect and dignity they deserve.

I would ask that section 2, paragraph 4 be amended to read, "That families and the disabled be supported so that they can play a meaningful role in the reduction of poverty and in promoting opportunity."

I would also ask that an independent body monitor the cost of living, with reference to accommodation and grocery costs, tying the Ontario disability support program's benefits to the cost of living. We know that double-digit increases were recorded for many food staples in the last year. These Statistics Canada facts were cited in last Friday's Globe and Mail.

Addressing this situation would go a long way towards realizing the vision of the preamble of Bill 152 of a province where each individual has the opportunity to achieve his or her potential to contribute to and participate in a prosperous and healthy Ontario.

The Chair (Mr. Shafiq Qaadri): Thank you. We have about two minutes per side, beginning with Mrs.

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Mrs. Maria Van Bommel: Thank you very much for your presentation, to both of you. One comment, which we've heard repeatedly throughout this, is the concern that the word "adult" hasn't been entered anywhere into the legislation. Certainly, with our Breaking the Cycle strategy—which is the first; what this bill wants to do is make many strategies in the future—there has been a focus on children. I think we should, as a committee, take full regard of your comment, as have others, that the word "adult" needs to be recognized. I think many of us, looking at the legislation, assumed that it was incorporated, included in things like the word "community" and that. But I think that for people's comfort, out-andout description as adults or individuals is probably something we should give careful consideration to. Thank you.

Ms. Naomi Berlyne: Okay, that's great to hear.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Van Bommel. Mrs. Munro.

Mrs. Julia Munro: Thank you very much. I just want to comment on a couple of the thoughtful comments that you made here. It seems to me that the issues you've identified are questions around the transparency, in terms of who the experts are, who the people are who are going to do the review of any kind of activity of the year or the five-year period.

Also, you mention here a different amendment, that a review has to be "undertaken by a body that is independent of the government." I guess really what we're talking about here is those principles of transparency and accountability. I just wondered if there were any other further elements to that that you feel are missing and that we should be looking at in terms of amendments to this bill

Ms. Naomi Berlyne: Are you talking about the review or just the bill in general?

Mrs. Julia Munro: Well, it's sort of a two-part, isn't it? You've got the annual review and then you've got the setting of a five-year strategy. Your comments seemed to focus mostly on the review, and I wondered if you had any to add to the five-year strategy idea.

Ms. Naomi Berlyne: Anything to add to the five-year

strategy idea?

Mrs. Julia Munro: Yes.

Ms. Naomi Berlyne: To me—I don't know if you want to say anything—that's the most important thing, that it be conducted by people who are separate from the government and who are experts on the issue. To me, that's what is key.

Mrs. Julia Munro: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Munro. Mr. Prue.

Mr. Michael Prue: This bill, here in Ontario, is different from bills in Newfoundland and Quebec in that they have not included adults. They have not included the people who suffer the worst poverty, who in my view are the disabled, but followed closely by First Nations, people of colour, new immigrants and women. That's really where poverty is. It's the whole face.

Is it enough just to add the word "adult," or should we be adding, as some of the groups that have come forward today said, very narrow definitions to include First Nations and the disabled? Or is just "adult" enough?

Ms. Naomi Berlyne: I wouldn't be opposed to that idea at all, what you're suggesting.

Mr. Michael Prue: Well, they have suggested. You've used the word "adult," so I want to make sure where you're coming from.

Ms. Naomi Berlyne: I'd say at least use the word "adult," but to include other groups would be great.

Mr. Michael Prue: Now, you haven't talked about this, and I'm not sure it's within the scope of the bill, but one of the things this government continues to do is to enforce a clawback. When a disabled person goes out and gets a part-time job—and you've talked a little bit about that—they claw back half of everything that's made. Is that a prescription to a lifetime of poverty?

Ms. Naomi Berlyne: Yes.

Mr. Michael Prue: I mean, I've said that many times. I'm not sure whether they believe me when I say it. What do you think?

Ms. Naomi Berlyne: Yes, that's a big, big problem. I've spoken to the Minister of Community and Social Services and she said that the way out of poverty for people on ODSP is to work, and that their goal is to get people on ODSP into jobs as much as possible. But what she doesn't understand is that if they go out and work, their income is clawed back 50%. That is not a way out of poverty.

Mr. Michael Prue: No, not unless you can earn \$20,000 or \$30,000 or \$40,000 and have only half—

Ms. Naomi Berlyne: Unless you can earn enough to get off ODSP, and most people on ODSP cannot earn that much. So, yes, that's a big, big problem, a big barrier. I'm not sure the government really clues in to that.

Mr. Michael Prue: But you are hoping that if we can include the word "adult" or even—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Prue, and thanks to you, Ms. McMurdo and Ms. Berlyne, for your presentation on behalf of Houselink Community Homes.

INTERFAITH SOCIAL ASSISTANCE REFORM COALITION

The Chair (Mr. Shafiq Qaadri): I would invite our final presenters of the day, Mr. Balmer and Mr. deGroot-

Maggetti, of the Interfaith Social Assistance Reform Coalition. Gentlemen, please be seated. Your official time begins now.

Mr. Brice Balmer: My name is Brice Balmer. I'm the secretary for ISARC. Beside me is Greg deGroot-Maggetti, who is one of our board members and works with Mennonite Central Committee.

When Deb Matthews tabled the Poverty Reduction Act, she stated, "The only way we're ever going to succeed in the fight against poverty is for it to become a core responsibility of governments now and in the future." ISARC agrees wholeheartedly with Minister Matthews's statement. It is time to make poverty history in Ontario for all people, not just children and parents.

ISARC believes that the Poverty Reduction Act is an important piece of legislation because it lays out a process and a framework requiring the Ontario government to continue to fight against poverty. However, it is not strong enough, as you've heard throughout the afternoon, and does not have enough vision to eliminate poverty in Ontario within the next 15 years.

Faith communities can work to enrich and enable healthy neighbourhoods and communities. Unfortunately, too much of our time, too many of our volunteers, too much money and building space is currently used for charity and for survival programs such as food banks, emergency shelters and soup kitchens. As peoples of compassion, we reach out to those who suffer; we have no choice. It is immoral to allow 10% of the population to live in dire poverty because of job losses, mental health issues, illness or struggles with current and past trauma and abuse. Today, it is time to move to poverty elimination so that all Ontarians can have dignity, be safe and maintain health. The faith community wishes to play a significant role in the nurturing of children and parents, in developing vital community centres and in bringing people together to solve personal and/or neighbourhood problems. We're tired of constantly being the fallback in terms of this charity model.

Over the past several months, ISARC has participated with dozens of other groups and many individuals through the 25 in 5: Network for Poverty Reduction in thinking about what is needed for strong poverty reduction legislation. We support these measures, and ask the standing committee and the Legislature to consider even stronger measures than in Bill 152 and within the 25 in 5: Network recommendations. It is time to eliminate poverty, not just reduce it. Let us challenge Ontarians to eliminate poverty in the province within 15 years. It is time for vision, not slight incremental changes.

ISARC began in 1986, when the then Liberal government under David Peterson called together the Social Assistance Review Committee. This was a vision document called Transitions. Since being called into being by that committee, ISARC has worked not only within the faith communities but also with the provincial government, local communities, provincial coalitions and on and on. We've worked because poverty destroys human dignity.

ISARC's board today sees another important moment, especially during the recession, when more and more people in the province are aware of economic vulnerability and would support the elimination of poverty. We look to John Stapleton's work through the Metcalf Foundation to show that positive and significant changes can happen in times of economic turmoil or a recession. Now is the time to put forth a vision.

Greg would like to speak to a few of the recommendations in particular from 25 in 5.

Mr. Greg deGroot-Maggetti: This afternoon, you've heard many groups come forward and say that this bill needs to lay out a vision for a poverty-free Ontario. ISARC holds to that vision. I would simply point out that the Quebec legislation has that right in there. It talks about the government of Quebec and Quebec society striving together for a poverty-free Quebec. Likewise, Newfoundland and Labrador's poverty reduction strategy lays out the vision "of a province where poverty has been eliminated."

I think it's important that the Ontario legislation includes that vision for a poverty-free province, for two reasons: one, it lets us know where we want to go, what our aim is; but the second is that it recognizes that poverty itself is a barrier to creating a society where everybody can develop to their full potential and participate fully in society. You've heard several presentations that talked about that. I think of Mr. Mantis, who talked about how difficult it is for injured workers to participate in consultations because they're living in poverty.

We also want to stress that in the move toward realizing the vision of a poverty-free Ontario, each poverty reduction strategy needs to set a target for substantially reducing poverty during the life of that strategy. It needs to be in the order of a 25%, 30% or 50% reduction in poverty within the five years of each strategy. As paragraph 2(3)1 reads, it's not clear that the specific target needs to represent a significant reduction in poverty.

Like many other groups, ISARC wants to stress that we're looking for a poverty-free Ontario for everyone. So we would look to insert the language about adults, and we would support many of the other presentations that talked about specific groups that have been disproportionately impacted by poverty, whether that's people with disabilities, people from racialized groups, aboriginal peoples.

ISARC also wants to underscore the importance of having an independent review of the poverty reduction strategy, with clear timelines for when the review should start and be completed and for when a report from the review needs to be tabled in the Legislature.

The review needs to be a step removed from political considerations, so that Ontarians can participate in a frank and honest assessment of what has worked and what next steps need to be taken to progress in making substantive and lasting reductions in poverty on the way toward a poverty-free Ontario.

Finally, section 5 on regular consultations states that the minister shall consult with key stakeholders, including individuals living in poverty. To be consistent, clause 6(2)(b) about the five-year reviews should also specify that the consultation for the review of the poverty reduction strategy include the list of stakeholders, groups and individuals named in section 5. We might also suggest that the committee consider some of the other recommendations that groups have made earlier about naming other specific groups who have been disproportionately impacted by poverty to be included in those consultations.

Mr. Brice Balmer: Based on the serious study of the cost of poverty by the Ontario Association of Food Banks, with the endorsement of Don Drummond, John Stapleton and other Ontario leaders, each Ontarian pays \$2,500 to \$3,000 per year to have poverty in Ontario.

We now have studies showing that reducing poverty is one of the ways of stabilizing our economy in the midst of a recession. But more than this, it is important for all people in Ontario to be healthy, safe and productive. In order to be creative, working and community-involved, all Ontarians need a sense of dignity and respect. Poverty destroys self-esteem and dignity. It is time to make poverty history.

Can Bill 152 create the vision so that we can all work together for the elimination of poverty in Ontario? Thank you very much.

The Chair (Mr. Shafiq Qaadri): We have about two minutes per side, beginning with Mrs. Munro.

Mrs. Julia Munro: As you know, we've heard a real consistency in terms of the messages today, and obviously that's a good thing. I wanted to just ask you, because others have used the Quebec and Newfoundland and Labrador ideas, if you are able to give us indicators that they have identified as those which would define the elimination of poverty—because in both cases, you quoted that that's what their goal is.

One of the things we've heard over and over again is the fact that there is no process here for whom the minister would consult with or that it would be public or accountable. So I just wanted to ask if you, as the last presenters, would care to give us some idea about what those characteristics look like.

Mr. Greg deGroot-Maggetti: Actually, the indicators that have been included in Breaking the Cycle are pretty good. The income indicator of 50% of median income, the low-income measure, is a good income-poverty benchmark. So what would a poverty-free Ontario look like using that indicator? Well, when no household is living with an income below 50% of median income, then we'll know we've reached that target.

It's important that there are other indicators around housing, around health status, education and things like that, because poverty includes income but goes beyond it to other things we need to develop our full potential and participate in society.

So that's actually a good benchmark. It's like the European Union's, except theirs is a little higher. Sixty per cent of median income is their low-income measure.

The Chair (Mr. Shafiq Qaadri): Mr. Prue.

Mr. Michael Prue: The staff have given us a little report here—I don't know whether you've seen this—and it shows the Quebec and Newfoundland and Labrador experience, and both of them trend to show that poverty is being reduced, but most importantly, it's not just being reduced for children; it's being reduced for adults and seniors at the same time. I'm very worried that this legislation will have only the effect of reducing poverty for children and actually make it worse for adults and seniors. Do you share that?

Mr. Brice Balmer: Very definitely we share it. Some of us work with people who are single adults who have struggled with unemployment, mental health issues, physical disability or something not of their own making, and they're among the most direly poor. Medical officers of health have now told us that they and also minimum wage workers do not have the amount of money they need to take care of both their housing and their food. We are really looking at social determinants of health, and for social determinants of health, single adults are among the worst off in all of Ontario.

Mr. Michael Prue: We have statistics that 85% or more of people who are disabled and receiving ODSP don't have children, so they'll never see any benefit of this bill.

Mr. Greg deGroot-Maggetti: That's why we're making the specific recommendations—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Prue. I'll need to intervene and now offer it to—

Mr. Greg deGroot-Maggetti: I'll answer the question later—

Mr. Michael Prue: Later, okay.

The Chair (Mr. Shafiq Qaadri): —the government side.

Mrs. Maria Van Bommel: I'm not quite sure why Mr. Prue is going at it the way he is, because this is a bill about strategies; and not just this particular one, Breaking the Cycle, which is our first strategy, but future strategies. I get the impression from Mr. Prue that he's seeing that all future strategies will only address children and families. The requirement under this bill is that every five years a strategy be developed.

We've heard a lot of discussions around the issue of adults. Some people have even said that they want to—and I think you talked about listing some of those, such as disability and injured workers.

My question is, are we running the risk of limiting when we start to list specific areas, so that we actually start, in a way, to entrench and enshrine that certain groups will get attention and others—we don't know what the future may hold. We may find in the future that things do change and more people may need to be included. How do we make sure that, by starting to list, we don't end up limiting or restricting and defining it in such a way that some people actually fall off the table?

Mr. Greg deGroot-Maggetti: Let me suggest a couple of simple words that can be put into those lists:

"including but not limited to"— and then those different groups.

The important thing, and I think this gets to the question that Mr. Prue was asking as well, is that if many groups are included in the consultation process and the review process and given the opportunity to bring forward their ideas for how to update the strategy—and it would be a good thing to actually do this more frequently than every five years—then there's a better chance for us to really build a comprehensive strategy.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Van Bommel, and thanks to you, gentlemen, Mr. Balmer and Mr. deGroot-Maggetti, for your participation on behalf of the Interfaith Social Assistance Reform Coalition.

If there's no further business before this committee, I remind committee members that we're in this room for our second day of public hearings, 4 p.m. to 6 p.m. Committee adjourned.

The committee adjourned at 1754.

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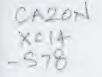
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Tuesday 21 April 2009

Standing Committee on Social Policy

Poverty Reduction Act, 2009

Assemblée législative de l'Ontario

Première session, 39^e législature

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Loi de 2009 sur la réduction de la pauvreté

Chair: Shafiq Qaadri Clerk: Katch Koch Président : Shafiq Qaadri Greffier : Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Tuesday 21 April 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Mardi 21 Avril 2009

The committee met at 1601 in room 151.

POVERTY REDUCTION ACT, 2009 LOI DE 2009 SUR LA RÉDUCTION DE LA PAUVRETÉ

Consideration of Bill 152, An Act respecting a longterm strategy to reduce poverty in Ontario / Projet de loi 152, Loi concernant une stratégie à long terme de réduction de la pauvreté en Ontario.

The Chair (Mr. Shafiq Qaadri): Chers collègues, je vous accueille à cette réunion du Comité permanent de la politique sociale. We are considering, as you know, Bill 152, An Act respecting a long-term strategy to reduce poverty in Ontario. I trust that there's no business before the committee before we call our first presenters? Fine.

COMMUNITY LIVING ONTARIO

The Chair (Mr. Shafiq Qaadri): Seeing none, we will invite our first presenter, Dianne Garrels-Munro, president of Community Living Ontario. Ms. Munro and others, just to inform you of the protocol, there are 15 minutes in which to make your combined presentation. Should there be any time within that remaining, it will be distributed evenly and rigorously amongst the parties for any questions and comments. If you might, please, both of you, just introduce yourselves individually. Your official time begins now.

Ms. Dianne Garrels-Munro: Okay. Good afternoon. My name is Dianne Garrels-Munro and I'm president of Community Living Ontario. This is Tyler—

Mr. Tyler Hnatuk: Tyler Hnatuk, social policy analyst with Community Living Ontario.

Ms. Dianne Garrels-Munro: I just stumble over his last name every time.

I'm pleased to be making a presentation to the Standing Committee on Social Policy on Bill 152, the Poverty Reduction Act. I would like to begin by providing you with some background information about our organization and about how people who have an intellectual disability are affected by poverty.

There are approximately 120,000 people in Ontario who have an intellectual disability. People with an intellectual disability and their families face rates of poverty that are significantly disproportionate to others in Ontario due to factors such as a history of institution-

alization, unequal access to education, low participation in the workforce, and a lack of adequate supports. These factors can combine to create a cycle of poverty and exclusion that can be hard to escape.

Community Living Ontario is a non-profit provincial association that advocates for and with people who have an intellectual disability and their families. We work toward building an inclusive society where people who have an intellectual disability participate with others in every aspect of their community. This means having a home in the neighbourhood that they choose. It means going to a neighbourhood school with friends and being included in regular classes with their peers. It means having a real job working for fair wages and continuing to contribute to your community through volunteer and recreational activities.

For more than 60 years, community living associations have worked to build communities' capacity to include people who have an intellectual disability through advocacy, community development and by providing essential supports and services. Across the province, there are 117 local associations that are members of Community Living Ontario.

We are pleased to have this opportunity to respond to the government's proposed poverty reduction legislation. Community Living Ontario has been publicly supportive of the government's decision to put forward a poverty reduction plan. Many community living associations participated in the consultations for poverty reduction and highlighted the fact that any strategy to reduce poverty must take into account the unique situation of poverty and exclusion faced by people who have an intellectual disability.

In this submission, we will add our voice to those who generally endorse all of the recommendations for strengthening Bill 152 that were developed by the 25 in 5 Network. We will also take this opportunity to briefly restate some of the broader issues that were raised by members of Community Living Ontario during the consultations that we feel remain unaddressed by this current strategy.

Our first recommendation follows the 25 in 5 Network in urging the government to pursue a poverty-free Ontario. Pursuing poverty reduction will lead to stronger communities that are more inclusive of all people. Strong communities lead to a powerful economy that makes the best use of the abilities and talents of its citizens. However, it is not sufficient to set a goal of reducing poverty.

We must pursue an Ontario that is poverty-free so that every person is able to flourish.

The government should work with the not-for-profit, voluntary and private sectors and with all citizens to identify sources of social exclusion and poverty and work toward a society where everyone has the opportunity to reach their full potential. The preamble of the act and subsection 2(1) should be amended to make the pursuit of a poverty-free Ontario the goal of poverty reduction strategies.

Our second recommendation relates to the importance of building an inclusive education system. Ontario's education system is featured prominently in the preamble to the proposed legislation and throughout the government's poverty reduction strategy. Given that the government has chosen to focus its current strategy on children, and particularly the education system, we are concerned by the lack of any specific strategy to enhance access to the education system for children who have a disability.

All children need to have the opportunity to explore their full potential by being supported to learn with their peers in regular classrooms and in regular schools. It is the government's position that "kids should be in classrooms learning together." The reality is that far too many children in Ontario who have an intellectual disability are not included in regular classrooms and do not have the same opportunities to make friends and pursue their education. This leads to lifelong poverty and exclusion.

Nothing would be more consistent with the government's focus on children and intention to break the cycle of intergenerational poverty than to implement an inclusive education strategy to ensure that children who have an intellectual disability are in regular classrooms with their friends, learning and setting goals for their future.

Mindful that this bill is not designed to make adjustments to the poverty reduction strategy, we recommend no change. Rather, we urge the government to initiate a strategy to include children who have an intellectual disability in regular classrooms in their neighbourhood schools before the first reporting date for the poverty reduction strategy.

Our third set of recommendations relate to the importance of addressing the poverty experienced not only by children and families, but also by adults in Ontario. The proposed legislation identifies a set of principles for poverty reduction. These principles look beyond the current strategy to the ongoing work that would be required of successive governments. With these principles, we are glad to see the government recognize that people with disabilities experience a higher risk of poverty.

However, the principle of "commitment and co-operation," as written, only recognizes the government's current commitment to children and families. This principle should be modified to recognize that the government is committed to reducing poverty for all Ontarians, including adults.

1610

Currently, the maximum benefit for a single adult through the Ontario disability support program is \$1,020

per month. This falls below the low income measure which the government has adopted as its poverty measure. A comprehensive strategy is necessary to bring the ODSP benefits to levels that reflect the real cost of living in Ontario.

We also must work toward strategies by which a person can build assets to escape poverty through avenues such as home ownership, savings and investments. We are pleased to see changes made to the Ontario disability support program to accommodate the registered disability savings plan, the RDSP, that will allow a person to hold and use assets without affecting their income security.

However, the changes that were made to accommodate the RDSP introduce a slight incoherence in policy regarding earnings and employment. Currently, a person is permitted to be a recipient of investments made by a family member or friend, yet is not permitted to build their assets through employment. Similar changes should be made to allow a person who is employed to keep more of what they earn without having their benefits clawed back.

We recommend that the social assistance review that will be conducted as part of the poverty reduction strategy look to strategies that will enable a person to earn a reasonable living so that they can build their own capacity to escape poverty.

We recommend that, as part of the government's poverty reduction initiatives, an independent committee be established to examine the benefit rates and to advise the government on where to set them, using rational and just criteria.

We also follow others in recommending that paragraph 7 of subsection 2(2) be amended to read: "That a sustained commitment to work together to develop strong and healthy children, adults, families and communities is required to effectively reduce poverty."

Our fourth recommendation relates to the recognition of the legal capacity of people who have an intellectual disability. The poverty reduction strategy presents a good opportunity for co-operation between ministries to address barriers that prevent people from fully participating in the economy. One such barrier is represented by the challenges encountered by people who have an intellectual disability when they attempt to enter into a legal or contractual agreement. The problem can arise in any number of ways, such as when a person wants to enter into a lease, open a bank account or start an investment such as an RDSP.

Article 12 of the United Nations Convention on the Rights of People with Disabilities states simply that people with disabilities enjoy legal capacity on an equal basis with others, and that countries will provide access to supports that all people may require to exercise their legal capacity. Canada has signed the UN convention and has been a driving force behind securing the provisions that relate to recognizing legal capacity of persons with disabilities.

The concept of supported decision-making was pioneered here in Ontario before being adopted into international law through article 12 of the UN convention. Through supported decision-making, which is recognized in other jurisdictions in Canada, a person can be supported by those they trust to assist them in making substantial decisions. The person and his or her support group are extended legal recognition for the purposes of entering into legal contracts.

Given the broad range of opportunities that are available or unavailable to a person, depending on the recognition of their legal capacity, we recommend that the government establish a plan to review the issues related to the recognition of legal capacity of people who have a disability as part of its poverty reduction initiatives. We offer our full support and expertise for any initiative, and look forward to working together with the government to resolve this barrier to full participation.

For our fifth recommendation, we add our voice to the other groups presenting on the proposed legislation who wish to link poverty reduction to human rights enforcement and accessibility. Subsection 2(2) recognizes that some groups of people have a heightened risk of poverty. A true poverty reduction strategy must do more than recognize this truth. It must take action to combat the inequality that increases the poverty of people with disabilities: immigrants, women, aboriginal people and racialized minorities. To do so, the Human Rights Code must be effectively enforced.

Subsection 2(2) should include an additional clause that reads, "The enhancement of the enforcement of equality rights through the Ontario Human Rights Code

is required to effectively reduce poverty."

Similarly, our next recommendation relates to linking poverty reduction to the issues of accessibility and enforcement of the Human Rights Code. If people who have a disability are to be included in the poverty reduction strategy, our schools, workplaces and communities need to be fully accessible to people who have disabilities. To achieve this, the provisions and the various standards in the Accessibility for Ontarians with Disabilities Act must be effectively enforced.

We join other groups presenting on this proposed legislation in recommending that an additional clause be added to subsection 2(2): "Meaningful enforcement of the provisions and standards set out by the Accessibility for Ontarians with Disabilities Act is required to effec-

tively reduce poverty."

Our seventh recommendation relates to expanding on the determinants of poverty that are cited in the bill. Poverty reduction strategies must take account of social determinants of poverty such as access to education, employment, housing, health care and standard of living. Any one of these alone is not a good measure of wellbeing or poverty.

We recommend that subsection 3(3) be amended to read: "Indicators that are linked to the determinants of poverty, including but not limited to income, education, health, housing and standard of living, to measure the

success of the strategy."

Our eighth and final recommendation relates to independent reviews. Community Living Ontario endorses

the recommendations of the 25 in 5 Network, providing for regular reviews of the progress on poverty reduction by an independent body reporting to the Legislature. These reviews should include the direct involvement of people who live in poverty, as well as organizations which work to reduce poverty.

We recommend that all references to reviews of the poverty reduction strategy be amended to provide for the review of the strategy by a body independent of government that is comprised in part by people who have an intellectual disability.

In conclusion, I wish to thank the government for moving forward with their poverty reduction agenda and for providing this opportunity to respond to the proposed legislation.

The Chair (Mr. Shafiq Qaadri): Thank you. We have a very brisk 45 seconds each. Mrs. Munro.

Mrs. Julia Munro: Thank you very much for coming. On page 7, you talk about subsection 2(2) and the enhancement of the enforcement of equality rights through the Ontario Human Rights Code. Could you just give us a little more explanation of what, specifically, you're looking for there?

Mr. Tyler Hnatuk: It's just so crucial that there is effective enforcement of the equality rights that are guaranteed through human rights and enforced by the Human Rights Code. We wish to join our voices with those of the 25 in 5 Network and others presenting who wish to link poverty reduction to human rights—

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Prue.

Mr. Michael Prue: Just on that same thing, so you can continue talking, that would also include First Nations people, people of colour, aboriginals—sexual orientation and others. Do you feel that the disabled are covered adequately, given that all these other groups are there as well?

Mr. Tyler Hnatuk: That's why we have an additional recommendation there with the Accessibility for Ontarians with Disabilities Act. The standards are still in development currently. We've been active at those tables, but we want to link poverty reduction to the accessibility law as well.

The Chair (Mr. Shafiq Qaadri): To the government side, Mr. Ramal.

Mr. Khalil Ramal: Thank you very much for coming. Thank you for your presentation. I listened to your recommendations—very important. They will be well taken by our government and by our ministry.

Also, I want to tell you that when we talk about poverty, we don't specify which groups because we're afraid to miss anyone. In general, the bill aims to cover every segment of our society: able, disabled, old, young.

So thank you again for your presentation. Hopefully, in the regulations, we'll include everyone.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Garrels-Munro and Mr. Hnatuk, for joining us today.

CANADIAN UNION OF PUBLIC EMPLOYEES

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter, Mr. Sid Ryan, if he's here.

Mr. Fred Hahn: He's not here. I'm taking his place.

The Chair (Mr. Shafiq Qaadri): Please come forward. I was convinced we wouldn't be able to note that absence there.

Welcome. You have 15 minutes, as you can see, to make your combined presentation. Please do introduce yourselves as you're making your presentation for the permanent Hansard recording, and as you've seen everything is very brisk and strictly enforced. Please begin. 1620

Mr. Fred Hahn: Hello, my name is Fred Hahn. I'm the secretary-treasurer of CUPE Ontario and I am the emergency stand-in for Sid Ryan. I'll let my colleague introduce herself.

The Chair (Mr. Shafiq Qaadri): Such things are possible.

Ms. Archana Rampure: My name is Archana Rampure and I'm a researcher with CUPE Ontario.

Mr. Fred Hahn: CUPE, the Canadian Union of Public Employees in Ontario, has about 225,000 members in the province, and nearly 30,000 of them are social service workers. As social service workers, those members see, front-line, the battle against poverty in Ontario every day, the consequences of unemployment and underemployment where too many residents are grappling with these issues in their daily lives. CUPE members in developmental services, child protection, child care, dozens of community agencies across the province, at the WSIB and in municipal social services, through Ontario Works, have reported an increase in the demands for their services created by the current economic downturn. Intake calls and referrals for services are up across Ontario, especially in communities that have been hit hard by job losses and wage deflation.

Poverty is also a personal issue for those people working in Ontario, and many of our members and many folks dealing with social and economic consequences of poverty are actually employed and working for wages that are poverty wages. CUPE Ontario has documented an incredible shift towards part-time and casual employment, particularly in developmental services and other parts of community agencies where, in some places, two thirds of the staff in the province are actually part-time or casual workers who cannot rely on full-time employment. Many of our members, especially those who are racialized, who are new immigrants, have also experienced poverty within their families. Job losses and casualization mean that tens of thousands of workers in Ontario are living far too precariously.

According to a recent report, an additional over 400,000 Ontarians could be driven into poverty in the next two years. It's why, during part of our union's presentation on the budget bill, we talked about ways that we believe that there has to be a comprehensive approach to

reducing poverty in the province. We're glad to see that this bill is here, but we understand, as I'm sure you all do, the huge task before the government. This is a relatively small bill to take on a very large task.

CUPE Ontario urges the government to take real action now to reduce the numbers of those who are suffering poverty as much as possible. This is not just an ethical thing to do, but we believe it's actually the best possible way to stimulate the economy and to ensure economic recovery for the province.

We applaud the stated goals in Breaking the Cycle: Ontario's Poverty Reduction Strategy, issued in December 2008, about reducing poverty by 25% in five years. In past times, the government has had to identify strategies for dealing with issues around poverty, and in this act in particular, we're glad to see that there are folks listed as heightened risk. It's important to understand that poverty affects different communities differently, and so immigrants, single mothers, people with disabilities, aboriginal peoples and racialized groups often suffer poverty in a different way. It's also important to note, however, that focusing on children, it will not be possible to actually address child poverty without addressing the systemic reasons why children and their families are living in poverty. In particular, there is clear evidence to show that women are disproportionately affected by poverty, in particular aboriginal women, racialized women, older and immigrant women and women with disabilities. Women's poverty traps them often in abusive intimate, employment and care-giving relationships.

This recession, we believe, is a real opportunity to fix the social deficit in the province. Even when the Ontario economy was in a growth phase, there were far too many Ontario residents who were falling behind on all social performance indicators. With years of prosperity, we know the issues and statistics around child poverty. In 1989, the child poverty rate in our province was 11.6%. By 2006, it had risen to 17.4%. It's an alarming trend and it shows that child poverty rates can increase even during periods of relative prosperity. We believe that this economic situation that we are all dealing with presents a real opportunity for the government in terms of economic stimulus and fighting poverty.

Living in poverty is tragic for the individuals involved, but poverty is also extremely expensive for governments at all levels. The economic recession that has hit Ontario so badly is disproportionately experienced by those who are poor. Those who do not qualify for EI benefits are especially vulnerable as well. In terms of immediate effect on both those who are living in poverty and the economy, directing transfer payments directly to low-income individuals has a more positive effect on economic growth than any personal income tax cut that any government can make.

Low-income individuals spend almost all of their income locally on rent, goods and services. Higher income earners, those who benefit noticeably from tax cuts, are more likely to save that extra tax rebate, especially during an economic downturn. An increase in social assist-

ance, as well as increases to minimum wage, will mean more money in the pockets of people who will spend it locally; that will keep local economies going all across the province. As the Fighting Poverty report notes, low-income households spend a great deal more of their total household income compared to those people in other income tax brackets.

We know that statistical evidence demonstrates that investments in social infrastructure, things like child care, affordable housing, income security for vulnerable residents—all of these things not only create strong communities, but they also stimulate the economy. In fact, we worked with the Canadian Centre for Policy Alternatives on the issue of child care in particular, and found that for every dollar that the government would invest in publicly delivered child care, there would be a direct economic benefit of \$1.80. And not just in soft infrastructure like child care and affordable housing; there are real opportunities with hard infrastructure investment, particularly in aboriginal communities. Many of the aboriginal communities across the province, for example, have undrinkable water. There are real opportunities to make concrete, hard infrastructure investments in aboriginal communities that would create jobs for aboriginal Ontarians and fix the heinous problem of unsafe water on aboriginal reserves.

Our province just can't let so many of its residents live in poverty any longer. Too many people are living and working in poverty, and their struggles continue to constitute a collective social and economic loss for all of us. CUPE Ontario believes that financial investment in poverty reduction is not just sound social policy. It's not just the right thing to do. In an economic crisis like the one we're living through, it's more than just sound social policy; it's good fiscal policy. It will help to stimulate the economy.

The government of Ontario has a unique opportunity to simultaneously stimulate the economy and to repair the social fabric of communities across the province. We understand that this will be a complex process, but given how much both individuals and communities have to benefit from an ambitious program of social and economic intervention that addresses the causes and consequences of poverty, we call on the government to engage all stakeholders, including those living in poverty, to be more actively engaged to come up with a more realistic and detailed blueprint for action.

We have some specific recommendations on Bill 152. CUPE Ontario, as did the previous presenter, asks that Bill 152 make a direct and specific reference in its preamble to a "poverty-free" Ontario as the goal of the legislation.

We call on the government to add real targets, standards and recommendations in to the legislation to make it necessary to ensure the implementation of real poverty reduction strategies. Such targets, standards and recommendations should be established with the Poverty Reduction Act through a series of broad and regular consultations with stakeholders, including those people living with poverty across the province.

The act must have legislative commitments on income transfers in a number of areas that will be critical to poverty reduction, including but not limited to:

- —an indexed living wage;
- —fully addressing all forms of income support;
- —not-for-profit, public child care provision;
- —labour market participation programs;
- -affordable social housing;
- -targeted investments in aboriginal communities; and
- —other social performance indicators.

Section 4 of the act, the annual report, must include a clause that requires the creation of a poverty reduction commission that includes people living in poverty and all other stakeholders who can independently report to the Legislature on the government's progress in reducing poverty in every year.

We want to thank the standing committee for the opportunity to make a presentation today.

The Chair (Mr. Shafiq Qaadri): Thank you. About a minute and a half per side, beginning with Mr. Prue.

Mr. Michael Prue: Yes, just to go down to your key recommendations, the recommendation that there have to be income transfers in a number of areas that are crucial to the reduction of poverty—and you list them. In the Legislature, I have often heard people talking about First Nations communities as a federal responsibility, and it seems that government is often reluctant to go there, save and except in crisis times like Kashechewan. Do you think the government of Ontario needs to move in that direction, notwithstanding the Constitution?

Mr. Fred Hahn: Aboriginal peoples are in crisis in our communities. They are residents of the province of Ontario. Also, we have a responsibility for them. That would be our position.

While government can and should continue to talk about ensuring, for example, that the federal government lives up to its responsibilities, it should not allow aboriginal peoples to suffer the indignities that are suffered in aboriginal communities across the province. We should step up to the plate and make those kinds of investments. And then, if we need to, we can go after the federal government for investments after the fact.

Mr. Michael Prue: Certainly what Quebec has done, to date.

Mr. Fred Hahn: Indeed.

Mr. Michael Prue: Okay. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Prue. To the government side, and Ms. Van Bommel.

Mrs. Maria Van Bommel: I just want to also talk about your recommendations. In your second one, you call on the government to add targets. We've heard from 25 in 5 that they don't want targets. They feel that they don't want anything that specific. They want each new strategy to have a target based on, I would assume, the flexibility of the government of the day and the recommendations from the consultations that they would do prior to setting a new strategy. Can you explain why you

feel targets are important when 25 in 5 feels that they don't want them?

Mr. Fred Hahn: Thanks for the question. Absolutely. The reality of having targets is that it gives you something against which to measure your success. Part of the problem of not having anything concrete is that, like many royal commissions, many studies that we've done, and, in fact, in some ways, many pieces of legislation, we can have very good words on paper, but without clear targets and timelines, it's very difficult to measure success. It's why we think that it's important to have some kind of targets that would be clearly articulated, to be able to measure whether or not there has actually been a reduction of poverty.

Mrs. Maria Van Bommel: But if you set targets now, you're trying to assume what is going to happen in the future. What would happen if the targets were not realistic, or there was a change—

The Chair (Mr. Shafiq Qaadri): I'll need to intervene there, Ms. Van Bommel, Ms. Munro.

Mrs. Julia Munro: Yes, but I'll carry on here. I wanted to ask a similar question, in terms of the fact that the legislation that we are looking at doesn't set targets that, it would certainly seem to me, and as you mentioned, you have to establish in order to measure. In terms of this presentation, did you give thought to where you would like to see targets, for instance, because it deals with children? Do you have any specific recommendations that you would make to the committee on those targets set for children?

Mr. Fred Hahn: No. Part of what our presentation actually spoke to was that what we're concerned about is that a singular focus on children, without understanding that those children live in families that are suffering from poverty, is actually a big problem. When we talk about targets, the reality of targets is that they can and should be set, but they can also be flexibly dealt with; right? A report against a target can talk about whether or not it met the target and whether or not the target needs to shift, based on the changing realities of the province. What it does is it gives something concrete against which to compare the work that's been done.

Mrs. Julia Munro: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Munro, and thanks to you, Mr. Hahn and Ms. Rampure, for your deputation on behalf of CUPE.

VOICES FROM THE STREET

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter, Mr. Michael Creek from Voices from the Street. Please come forward, Mr. Creek. Welcome. As you've seen in the protocol, you have 15 minutes in which to make your presentation. I invite you to begin now.

Mr. Michael Creek: Good afternoon. My name is Michael Creek and I'm the coordinator of Voices from the Street. I'm a director with Canada Without Poverty, formally the National Anti-Poverty Organization. I'm a

member of 25 in 5. But today I would like to speak as an adult who lived in poverty for 13 years.

I was a visitor in the gallery of the Ontario Legislature when the Honourable Deb Matthews introduced Bill 152. I was there on that historic day enshrining poverty reduction into legislation. I felt a sense of pride that I had played a small part in getting to this stage, but I had this underlying fear of what Bill 152 would become as the years rolled on. Would we have a comprehensive poverty reduction strategy? Would the bill be equitable and consultative? Would those with lived experience of poverty play an important role? Would we set measures of poverty reduction and evidence-based results? Would the government remain accountable and transparent in their actions?

I know the damage that poverty inflicts. For 13 years, my life was shackled to the chains of poverty. I see the damage that is done to individuals each day in our province. Occasionally, I get to see the chains of poverty broken, but the opportunities to escape the deadly clutches of poverty are few and far between.

Bill 152 will commit this government and future governments to a poverty reduction strategy. Each of us in this room and throughout our province has a dream, a wish and a goal of how Ontario should look. We cannot make poverty illegal, but as citizens we have a moral responsibility and an obligation to no longer sit idly by as others find their lives smothered in the ugliness of poverty and social exclusion.

I can imagine an Ontario that is free of poverty, a stronger, healthier province that is equitable and fair. An Ontario that is free of poverty will have an improved economy that will lead this country. We will have strong, healthy communities where each citizen can live those dreams.

As persons with lived experiences of poverty, we should not allow Bill 152 to go forward in its current form. We believe the government has started in the right direction. They have set the bar far too low. We are capable of so much more. We can have a poverty-free Ontario.

Our first recommendation is in the wording in the preamble of Bill 152. We would like to see the following sentence added: "That as a province we will strive to be leaders in poverty reduction, allowing for equality, participation and social inclusion."

Our second recommendation is that we would like the act to include more language around a poverty-free province. Why limit our scope to just poverty reduction when it is within our limits to achieve so much more?

Our third recommendation is that in section 3 a target shall be set every five years or less that will substantially reduce the number of citizens living in poverty within that time period. We would recommend that a target of 5% or more is achievable.

Now we come to one of the most important areas, that of adult poverty. The government through its policy, Breaking the Cycle: Ontario's Poverty Reduction Strategy, commits only to the reduction of child poverty. However one wants to see poverty reduced, one cannot

ignore the fact that children are poor because their parents are living in poverty. If the government limits their resources to helping only children or their parents, poverty will remain entrenched in our society and communities. The government, by ignoring the words "adults" and "singles," is only continuing the bashing of poor people. To think that we could delude ourselves with the idea that helping children will somehow end the scourge of poverty is a mistake. We believe that no child needs to live in poverty. We are only making ourselves feel good by saving the children first, ignoring the causes and effects that have them living in poverty in the first place. Our fourth recommendation is to include the word "adult."

Our fifth recommendation is based on human rights. In Ontario we have a Human Rights Code. Also, as a province within the federation of Canada, we have a legal obligation to abide by international agreements, covenants and treaties that our federal government signs on our behalf. When you live in poverty, your dignity, your security and your rights of equality are stripped away. You become second- or third-class citizens, because you spend all of your energy and all of your time just trying to survive. We need to strengthen the Ontario human rights laws and enforce those rights. By doing so, we will see a reduction of poverty.

Our sixth recommendation is that annual reporting is essential so that the public and opposition parties will have the opportunity to add their expertise and contribute to a stronger, more robust poverty reduction plan. This will also allow those with a lived experience the opportunity to measure the government's actions, so we ask that a report to the Legislature be included in Bill 152.

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Based on the assumption of an annual report on poverty, we will need to have regular reviews of a long-term poverty reduction strategy. These reviews will strengthen the goals and outcomes of poverty eradication. The strategies that are used for poverty eradication must be evaluated. Are they effective? Are we achieving our goals? These reviews will allow evaluations and recommendations, allowing for realignment and consultation of goals set out in the overall plan. This would be recommendation 7.

The cost of poverty is staggering not just in the monetary sense, but in the loss of human potential and opportunity. Recommendation 8 is an amendment of paragraph 3 of subsection 2(3), "Indicators that are linked to the determinants of poverty", adding the following: "including but not limited to income, education, health, housing and standard of living to measure the success of the strategy."

We also recommend that the government appoint an independent body that shall review the strategy the government has chosen. The review needs to take place sometime between year three and no later than year four. This review must be completed within a specified timeline; we would recommend a maximum of six months. The review must be tabled in the Legislature within 60 days of the review's completion.

We would also like to recommend that the government always include those with lived experience to be part of this review. We also feel that Bill 152 needs to be amended so that a consultation includes stakeholders, all other levels of government, members of the public and non-profit sector, business and those who have experience of living in poverty.

At Voices from the Street, we want to be part of the solution to build a stronger, more prosperous province. We will continue our work to eliminate poverty and social exclusion. Thank you for the opportunity, for allowing us to present this submission to the standing committee.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Creek. There's a generous amount of time per side. We shall begin with the government. Ms. Van Bommel.

Mrs. Maria Van Bommel: Thank you for your presentation. You brought a lot of different things into this.

One of the things you talk about—and I'm going to go back through your presentation—you talked about the fact that escaping poverty is very difficult, and as you said, opportunities to do that are few and far between. Then you went on to say that you were not necessarily in agreement with the fact that our first strategy is focused on children. I'm agreeing with you when you say that escaping poverty is difficult. With poverty, the sense of being poor is something that becomes very internalized. If we have an opportunity to save a child from that so that they have the confidence and the self-esteem to move away and to grab opportunities when they do come, then I think maybe we'll see more often an opportunity to break away from poverty. Would you disagree with that?

Mr. Michael Creek: I would disagree with the statement as you have stated it, but I would also, if I could, add a little bit, maybe, to it. We don't think that any child should live in poverty in this province, but we also know that children look towards their parents and other adults. So when a child sees their family struggling and living in poverty, those effects that will happen to that child have to be measured also. I don't think we take that into account when we have children who we're trying to lift out of poverty, but all around them in their communities are people who are struggling. I think that—

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Van Bommel, I'll need to intervene. Ms. Munro.

Mrs. Julia Munro: Yes, thank you. I want to compliment you on the thoroughness of this presentation. In the time that I have, I just wondered if you could give me a sense of more specific information when you say, "We need to strengthen the Ontario human rights laws and enforce those rights."

Mr. Michael Creek: It's in connection with—the federal government signs treaties on our behalf. I think that Ontario needs to recognize that when the federal government does that, it's signing those treaties on behalf of Ontarians, and when we don't live up to those covenants and agreements, then we're doing each person in the province a disservice.

For me personally, I found that my rights were stripped away. Many of those rights may not be found directly in the Ontario Human Rights Code, but certainly my right to the security of the person was threatened every day while I lived in poverty.

Mrs. Julia Munro: Thank you, because that's the kind of detail that I was looking for there. The other thing that I would compliment you on are the issues around asking that a report to the Legislature—this is certainly something that we have recognized. This bill, as it is presented, has nothing in there to bring accountability or any kind of transparency to the process, whether it's the annual one or the strategies every five years. So I want to thank you for recognizing those issues, as we have done.

Mr. Michael Creek: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Munro. Mr. Prue.

Mr. Michael Prue: In my view, the failure of the government to date has been that they have focused narrowly only on children. They have left out the whole class of people who live in poverty, whether it be the First Nations community, the disabled, new Canadians, people of colour—just the whole range. I think that's what you're trying to hit on: that the government has to get off this narrow focus. It's not just getting children out of poverty; it's getting everyone out of poverty. Is that fair, in a nutshell?

Mr. Michael Creek: That's pretty well it in a nutshell. What I'm trying to say is, I think the government needs to be also commended on their steps of starting this process. But also we need to hold governments accountable, whether that is the government that is in power now or future governments. We have to be able to have ways and means that we can fight back or change governments' minds about what we think are priorities. I do think that in many senses the focus around child poverty, to me personally, is too narrow.

Mr. Michael Prue: Too narrow. Many of our people who live in poverty, particularly the disabled, have no children. That is not surprising. It's absolutely true. A strategy that involves only children, of necessity, will never assist them at all. Can you comment on that?

Mr. Michael Creek: I agree with you 100%. I was a person who was on ODSP. ODSP, as it stands, is a sentence to a life of poverty. It's commendable that governments give 2% or 3% increases, but it doesn't allow people to get out of poverty. My understanding is that there are going to be reviews of OW and ODSP. Within those reviews, we'll fight for changes that we see that need to be made with OW and ODSP.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Prue, and thanks to you, Mr. Creek, for your deputation and presence on behalf of Voices from the Street.

ONTARIO ASSOCIATION OF INTERVAL AND TRANSITION HOUSES

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward: Ms. Morrow and

Ms. Komiotis on behalf of the Ontario Association of Interval and Transition Houses.

Welcome. You've seen the protocol. You have 15 minutes in which to make your combined presentation. I'd invite you to begin now.

Ms. Eileen Morrow: Thank you. Ms. Wendy Komiotis: Thanks.

Ms. Eileen Morrow: I'm just going to have a little water first.

My name is Eileen Morrow and I'm the coordinator of the Ontario Association of Interval and Transition Houses, which is a province-wide network primarily of first-stage emergency shelters for women and their children who are fleeing abusive relationships. We have been working on all of the issues that are of concern to the women we've worked with for over 30 years. We certainly know of the experiences of women who are experiencing violence. One of those experiences often is poverty—whether or not women have lived in poverty before they've left an abusive relationship.

Obviously I'm not going to read my presentation in whole, but I would like to first of all comment on a congratulatory note to the government for taking this step forward in terms of putting into legislation the social responsibility of a government to make poverty reduction a priority and a responsibility that cannot be escaped within government policy. I think that's really a significant step forward. I also think that we would like to congratulate the government for setting one target and for speaking about the need to measure, evaluate and report, and to consult, in particular, with those who are affected by poverty. I'd like to congratulate the government for some of the outstanding principles of this legislation, including eliminating barriers, looking toward the full participation of citizens of Ontario in their communities, and so on.

1650

Having said that, I think it's important for us to also come and assist the government of the day and the Legislature as a whole to improve this piece of legislation because we believe that it is a significant piece of law. We know from women who are experiencing violence that violence and poverty are merged in a very destructive partnership that steals women's lives, sometimes quite literally. Poverty keeps women from leaving an abusive relationship. It factors quite highly into their decisions to remain with or leave an abusive partner. It affects their ability to find a place to live. It affects the lives of their children. It puts them into untenable situations between different systems—for example, the oversight of the social assistance system and the scrutiny of the child welfare system, and often they spend all of their time struggling in an exhausting and very debilitating process on a daily basis to survive and to protect their kids.

This act, as I said, is significant, and we want to make some suggestions for improving the foundation, the accountability and the overall goal of this legislation. I'll start by saying that we have noted within the principles a list of those communities that this government feels need particular and specific attention. We are very troubled that women as a group are not included in that list. We recognize the struggles of single mothers for sure, because much of the work that we do is with women who have left abusive relationships and are facing an uphill battle to raise their children alone. However, that doesn't actually take on the real root of the issue, which is the inequality and inequity of women as a whole in this province, in the country and globally, in fact—internationally. We are very concerned that women do not appear within this list when we know, from reams of research that we don't need to outline here, that women are recognized as a disadvantaged group economically, socially and politically.

In addition to that, as the previous presenter was speaking about with Mr. Prue, we recognize that among women—we also need to address inequity, inequality and discrimination against women: aboriginal women, Metis, Inuit and First Nations women; women of colour; immigrant and refugee women; certainly women with disabilities; women who face regional discrimination in the province of Ontario; older women who are facing years without appropriate pensions, and so on. We know that the poverty of women crosses many constituencies of women that we need to address specifically with regard to their situations.

It's also very important in our assessment that we not only recognize different forms and differential impacts of poverty on groups of women but that we recognize that when those inequities coincide, when they intersect, the poverty and violence against women increases, the poverty impacts increase and the barriers increase to escaping that poverty. These intersections are not recognized within this legislation, and the way that they work together to intensify the impacts of poverty are not recognized within this legislation. So we are suggesting that a list—even if it were comprehensive—needs to also be developed with regard to an intersectional analysis of poverty.

With that in mind, we're recommending that the principles and the foundation of this piece of legislation recognize an equality framework and that the preamble specifically speak to the social, economic and political inequality that women face in Ontario, the poverty that results from that imbalance, and the increased impacts and vulnerability to violence and poverty of women who experience intersecting inequality. We also suggest that paragraph 3 of subsection 2(2) be amended to include the word "women."

We're pleased to see, actually, that the government has spoken about one target—and we heard the question earlier in terms of the different positions on targets and timelines. We need to look at targets and timelines in the legislation and not simply in the preamble, rather than leaving it to political will. In our experience as advocates who work with women, we're often disappointed by the political will of different governments, and I think that we need to have that tool. This legislation, if it passes, is

too important not to be transparent, clear and unambiguous in what it's saying. So we would suggest minimum targets and minimum timelines. We recognize, of course, that the way things go, it's often the minimum that will be used, but we know that there will also be guidance provided, and it could be included in the legislation, with regard to how those targets are developed and the process for doing that.

In terms of building an effective strategy, we do believe that it's also important to talk about some of the ways in which the mechanisms will be developed, and we have a lot of evidence and research, of course, to guide us on this. We know the things that affect poverty and improving people's conditions for life, and those things are not confined to or limited to, but they do include: publicly funded child care; pay and employment equity; initiatives to increase social assistance to reflect the cost of basic needs, at least; enhancement of the social safety net; access to decent jobs and wages; education and training; housing supports; programs to eliminate the barriers based on discrimination; and protections from exploitation, harassment, unsafe working conditions and those intersections that I spoke about earlier. We believe that it's possible to put those and others into this legislation as the means by which we measure, as guidance for future governments, and that minimum targets could be set within those as well.

In terms of accountability, we agree with presenters already here that we need a transparent and objective review and evaluation of any poverty reduction strategy in the government, and we also need that report to be provided within the Legislature for full public debate.

We would also recommend that any strategy to reduce poverty will need money, because after all, isn't that the issue? So we would like to see within this legislation a designation of funding that specifically is protected to deliver this goal, and perhaps a percentage of each provincial budget, based on the need that we're talking about. Certainly, that should be a target and it should be protected.

Finally, we'd just like to speak about the vision. We're concerned that the vision is reducing poverty. We believe that poverty is not inescapable, it's not unending, and we should expand our vision to include a poverty-free Ontario. So we recommend that this legislation be amended to change the wording from "poverty reduction" throughout the document to "poverty elimination."

1700

I'd now like to introduce Wendy Komiotis from METRAC to speak about a report that has been put together by Wendy and her organization, along with the Woman Abuse Council of Toronto, that has gathered comprehensive province-wide information for you on the poverty of women.

Ms. Wendy Komiotis: I'm Wendy Komiotis, executive director of Metropolitan Action Committee on Violence against Women and Children.

Eileen has pretty much summed up the issues that are in our report. We did a policy research paper that took a one-year period in 2008. The research was conducted by Janet Mosher, who is a professor of law at York University.

We went across the province and spoke to over 60 women; as well, we have the input of more than 60 various organizations from various sectors. Clearly, what women told us was that there was a significant link between their experience of poverty and their experience of violence, and that they consciously made choices to stay in relationships that were abusive, despite the trauma of those experiences, because of their poverty and the hardship they experienced.

So I think it's really important to underscore the importance of integrating in this legislation women as being impacted by violence and impacted by poverty in a particular way. Even though it's important to recognize children and how children experience poverty, women are often the primary caregivers of children, and this clearly came out in that they choose to stay in those relationships as a way to support their children.

There are a number of recommendations that we came up based on what the women told us, and I'd just like to quickly run through those recommendations and wrap it up.

Your legislation must include women as a whole.

The Chair (Mr. Shafiq Qaadri): You have 40 seconds left.

Ms. Wendy Komiotis: Sure. That stands not only for women who have children but women who do not have children; older women who have raised their children; young women who experience disproportionately high rates of violence and stay in abusive relationships because of their poverty; and all those other intersections, including women with disabilities and aboriginal women, as has been mentioned.

I think it is also important in your legislation that when you speak of the elimination of barriers, you recognize that discrimination is a significant barrier, and the stigma of poverty is a significant—

The Chair (Mr. Shafiq Qaadri): With regret, Ms. Komiotis, I will have to call this deputation to an end. I would thank you on behalf of our committee, Ms. Morrow and Ms. Komiotis, for your deputation and presence on behalf of the Ontario Association of Interval and Transition Houses.

CANADIAN AUTO WORKERS

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenters to please come forward. They are Mr. Watson and Mr. DiCaro of the Canadian Auto Workers. Gentlemen, please join us. I invite you to be seated. Your official time begins now.

Mr. Angelo DiCaro: Thank you very much. The CAW welcomes the opportunity to submit our views and recommendations to the consultation process regarding Bill 152. The CAW represents over 225,000 workers across Canada. Since our founding in 1985, CAW membership has grown and diversified. We now represent

workers in 17 identifiable sectors of the economy from auto manufacturing, aerospace and transportation to retail, hospitality, health care, mining, gaming and many others. Most CAW members—about 62%—live and work in Ontario.

We appreciate the provincial government's commitment to continue engaging the people of Ontario in a discussion around poverty reduction. Poverty in Canada is a grave social and human injustice and a black mark on the reputation of our province and our country. The CAW is committed to the goal of eradicating poverty and will do everything in our power to work with the provincial government to make this goal a reality.

We believe the provincial poverty strategy released on December 4 of last year is a bold first step in tackling one of the most important challenges facing Ontarians today. It lays out a comprehensive program to address many of the social and economic factors that contribute to the persistence of poverty. However, the CAW believes that one of the failures in the government poverty plan is that it specifically frames the discussion around the issue of child poverty in Ontario only and fails to capture the full extent of the problem. This is especially concerning as the current economic recession worsens, job losses continue to mount and more Ontarians in all sectors of the economy are at risk of slipping into poverty.

The plan also misses the mark on a number of important and necessary policy levers, as we see it, especially in regard to the long-overdue increases to social assistance rates, a firm commitment to maintaining and monitoring minimum wage levels against the rate of inflation, and improved access to collective bargaining for working people.

I'm going to ask my colleague Steve to provide a bit more context to this and then we'll get into our recommendations on Bill 152.

Mr. Steve Watson: You see our reports. I'm just going to quickly highlight a few things of concern about the content of a poverty reduction strategy—what it should contain.

First of all, the most obvious is that social assistance rates, the ODSP and OW rates, are simply too low. They can't be justified from any objective point of view. Even the minister has said herself, on occasion, that there is no justification for these rates and that that has to be addressed. They're not justifiable from the point of view of the cost of nutrition, real rents or basic needs.

On the minimum wage, we commend the government for the fact that there has been a substantial increase in the minimum wage, and another increase is due. But we got into this fix in the first place because from about the mid 1970s on, generally speaking across the country, minimum wages were not indexed to inflation for a prolonged period of time. What we need is the \$10.25 implemented now, plus an indexation formula so that we don't wind up back in the same fix that we had to finally correct. I think that speaks for itself.

We also believe, as a union, that government is not the only agency that can reduce poverty. We are very good

redistributors of income. The CAW and our brother and sister unions in the province and in the country are very good at it. Give us the tools to do the job; stop tying our hands behind our back. We had a card-based certification system in this province from 1950 to 1995 that allowed workers at least some reasonable chance of joining a union and exercising the right to collective bargaining. You have effectively taken that away from the majority of workers who try to organize with this forced second vote that only gives employers the opportunity to threaten and intimidate workers who try to access a public right—the right to free collective bargaining. You know that the solution is to put back in place that certification system and make other improvements to the labour code. That would also be part of a poverty reduction strategy.

Mr. Angelo DiCaro: In the broader context, we'll get into more specifics on Bill 152. Again, we commend the government for taking this step, but we believe the plan, as it's proposed in the legislation—the proposed legislation—must go further in policy prescriptions to address the instability and insecurity many Ontarians face. We stand in support of the proposed amendments to Bill 152 submitted by the 25 in 5: Network for Poverty Reduction and, in addition, the CAW provides the following recom-

mendations for your consideration.

Firstly, we believe Bill 152 needs to identify a more ambitious and holistic plan for poverty reduction in Ontario that not only establishes a 25% target for the reduction of child poverty in five years, but an equal reduction target for all Ontarians, including working-age

adults and senior citizens.

It doesn't require us telling you this, but in the past months, tens of thousands of manufacturing jobs in this province have disappeared, with many more on the horizon. The rapid deindustrialization of our economy is coupled with a steep decline in good-paying, family-supporting jobs, threatening the future viability of hard-hit industrial communities like Windsor, Kitchener-Waterloo, St. Catharines-Niagara, Thunder Bay, Oshawa and many more.

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It's also important—and we'll stress this—that older workers and senior citizens are groups at risk of deep poverty, especially as pension plans in this province remain in a precarious state, and there will likely be thousands of retired workers and other community and labour groups on the steps of Queen's Park on Thursday to drive that point home.

Our first recommendation to Bill 152 is that the language of paragraph 7 of subsection 2(2) be amended to read: "That a sustained commitment to work together to develop strong and healthy children, adults, seniors, families and communities is required to effectively

reduce poverty."

The CAW strongly believes that these twin goals of eliminating poverty in Canada and creating opportunities for individuals to find good-paying, stable jobs in industries that are contributing to healthier and more vibrant communities that promote environmental sustainability are inherently linked. The Ontario government has already taken a bold step forward through its Green Energy Act, which aims to create 50,000 new green-collar jobs in the province, generating billions in economic activity. We shouldn't stop there. Investments in public infrastructure—transit, housing, public parks—and community revitalization projects, especially for low-income communities in this province, can play a tremendous role in moving Ontarians into meaningful employment and, at the same time, contribute to an improved standard of living by maintaining healthy and more sustainable communities.

So we recommend that the standing committee include language that would fall under subsection 2(2) and added as the eighth principle, under the heading, "Good, Stable Jobs in a Sustainable Economy," with text that reads, "That all Ontarians are entitled to work in good, stable jobs that also promote strong, healthy communities and contribute to environmental sustainability."

Mr. Steve Watson: I'm going to go straight to recommendation 3 and read it. It has to do with nutrition.

Building on the recommendation provided by the 25 in 5 Network, we recommend that paragraph 3 of subsection 2(3) be amended to read: "Indicators that are linked to the determinants of poverty, including but not limited to income, education, health, housing, standard of living, hunger and the ability of an individual or family to afford the cost of an adequate nutritious food basket to measure the success of the strategy."

We actually thought it odd that nutrition and hunger would not be included as measures of success against poverty. We know that there's an increase in the use of Ontario food banks. That's noted in our paper. We also know that 37% of all the users of food banks are children, but we have very specific, identifiable ways of measuring that success. There is the cost of a nutritious food basket, depending of course on the size of the family, that's done by public health officials—not by us, by Toronto Public Health and public health officials in other parts of the province. We can measure that. We can measure the increasing use of food banks or the decreasing use of food banks as a way of measuring the success of this strategy.

Just to wind up, we appreciate the opportunity to submit our proposals and look forward to working with the government to achieve these goals. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you. We have about 90 seconds each, beginning with Mr. Prue.

Mr. Michael Prue: Thank you for including the issue of hunger. It's one of the first times we've heard that. There was a report in the Toronto Star last week about people living in poverty, particularly adults going hungry one or more days a week in order to make sure their children weren't hungry. We only measure child poverty here, not measuring the hungry mother or the hungry father.

Tell me what other things you think we can do. Do you think this government should act on increasing the rate? It's been suggested \$100 a month for a healthy food basket would go a long way.

Mr. Steve Watson: Yes, we agree with that. That was put forward by the 25 in 5 Network. We also think that basically the structure of OW and ODSP benefits should be structured around three measures: the real rents, the real cost of nutritious food baskets, and then basic needs, as determined in consultation with people who have a lived experience of poverty. Without that consultation, there is no effective way of measuring what basic needs really are.

Mr. Michael Prue: There's no way that the people living on Ontario Works or ODSP, which pays more, come anywhere close to the poverty line. Everyone who lives that way lives in dire poverty. What kind of amounts are you looking at that the government should increase them?

Mr. Steve Watson: We're looking to at least restoring what was in place in this province prior to the cuts that were made in 1995. In fact, it's quite—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Prue. We'll need to intervene there. Ms. Van Bommel.

Mrs. Maria Van Bommel: I'm just going to go a little further with what Mr. Prue started, which is hunger and nutrition as indicators. Certainly in the current Breaking the Cycle strategy, what we want to do is develop a deprivation index, which includes—the index is under development right now with Food Banks Canada. So that's in the current strategy. You're saying you want this included as well in the bill as an indicator?

Mr. Steve Watson: Yes.

Mrs. Maria Van Bommel: Because in your presentation, you cross over between the current strategy and the bill itself, and I'm just wonder what you're—

Mr. Steve Watson: Well, within the bill itself to actually name "nutrition and hunger" right within the body of the bill, so that the entire province, the public, everyone knows that we can measure success of the strategy against those targets, against those factors, as well as other factors. Correct? Obviously there's a crying need to do that.

Mrs. Maria Van Bommel: Okay. So you want to include this in the bill itself.

Mr. Steve Watson: Yes, in the bill itself, absolutely.

Mrs. Maria Van Bommel: Thank you.

The Chair (Mr. Shafiq Qaadri): Ms. Munro.

Mrs. Julia Munro: On page 11, when you're talking about hunger and nutrition, it occurred to me where you've suggested that the bill should include education, health, housing—the determinants—this bill has no baselines. So many presenters have expressed the frustration that there's no way to measure when you don't have some kind of point of departure. I just wondered, when you were talking about those specific determinants, if you would also support the creation of baselines so that in fact when you come to look at those annual reports and the setting of a new strategy every five years, you'd have those baselines from which to work.

Mr. Steve Watson: Yes. Of course, in principle, baselines would be useful, as long as we see what baselines are actually used. But we know the costs of real average

rents. That is from a public source, from Canada Mortgage and Housing Corp. We know the cost of nutritious food baskets. That comes from public health; it doesn't come from us. The other thing that would be a little more difficult to measure would be other basic needs besides shelter and nutrition. That's why we stress that the only meaningful way of measuring those things would be in consultation with people directly affected. That would have to be meaningful consultation. But even when you look at shelter—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Munro, and thanks to you gentlemen, Mr. Watson and Mr. DiCaro, for your deputation on behalf of the CAW, Canadian Auto Workers, and your written submission.

REGISTERED NURSES' ASSOCIATION OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter, who I know quite well and doesn't seem to be in the room, Doris Grinspun.

The Clerk of the Committee (Mr. Katch Koch): She is.

The Chair (Mr. Shafiq Qaadri): Where? Oh, there she is. There you are. You're hiding. The Registered Nurses' Association of Ontario, RNAO. As you've seen, Ms. Grinspun, your protocol is 15 minutes. I invite you to please begin. Please do introduce your colleagues as well.

Ms. Doris Grinspun: Thank you very much. I am the executive director of the Registered Nurses' Association of Ontario and my colleague, Dr. Lynn Anne Mulroney, is a registered nurse and a policy expert working with RNAO.

Every day, registered nurses across the province are working with their clients and neighbours as they struggle to meet basic needs for nutritious food, affordable shelter and human dignity. From our nursing practice and from a growing body of scientific evidence, we know that poverty harms health and puts people at a greater risk for early death throughout the life cycle.

As poverty is such a threat to the health and well-being of individuals, families and communities, RNAO welcomed the release of Breaking the Cycle: Ontario's Poverty Reduction Strategy in December 2008 as a strong start to building a stronger, healthier, more inclusive society. Now, more than ever, in these challenging economic times, we say that bold and sustained leadership is required because the promise of this strategy must be fully realized in improved living conditions and healthier, longer lives for all Ontarians.

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RNAO urges the Standing Committee on Social Policy to strengthen Bill 152 so that it will more effectively fulfill its purpose of establishing mechanisms to support a sustained, long-term reduction of poverty in Ontario. RNAO's recommendations for amendments and their rationales are explained in detail within our written

submission, but I would like to emphasize a few key points here.

Vision of a poverty-free Ontario: In order to build a stronger, healthier, more inclusive Ontario, we need to work together toward a vision of a poverty-free province, rather than the more modest and ambiguous goal of reducing poverty. We need to be explicit about the final destination as a province without poverty, while recognizing various measures of poverty reduction as necessary intermediate steps toward the ultimate goal.

A comprehensive strategy must not exclude adults. While RNAO fully supports the need to reduce child and family poverty, it is also absolutely essential that single adults not be excluded from a comprehensive approach to

addressing poverty.

We also need to enhance enforcement of equality rights through the Ontario Human Rights Code. Principle 3 of this bill recognizes that immigrants, single mothers, people with disabilities, aboriginal peoples and racialized groups currently have a heightened risk for living in poverty. To give this important principle teeth, it is essential to make an explicit link with human rights legislation as a mechanism to address discrimination. A human rights approach would also be consistent with article 25 of the Universal Declaration of Human Rights of 1948: "Everyone has the right to a standard of living adequate for the health and well-being of himself/herself and of his/her family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his/her control."

We also want to strengthen this bill to increase transparency, accountability and public engagement. RNAO joins with other community members such as the 25 in 5: Network for Poverty Reduction in urging that this bill be strengthened by making it explicit that the specific target for poverty reduction shall represent a substantive reduc-

tion in poverty within the next five years.

Within four years of the release of Breaking the Cycle: Ontario's Poverty Reduction Strategy, an independent person or group should be appointed to undertake a comprehensive review of the implementation and effectiveness of the poverty reduction strategy. This independent review should be tabled in the Legislature in order to enhance accountability, transparency and credibility. It is essential that a meaningful consultation process be initiated so that those who have direct experience with poverty and social exclusion would be encouraged and would have the opportunity to fully participate in the development, implementation and evaluation of the poverty reduction strategy. In fact, we should make the mechanisms such that they will be supported to participate. The government will then be able to issue a revised long-term poverty reduction strategy for Ontario based on the independent review.

We would like to extend our thanks to the Standing Committee on Social Policy for the opportunity to provide these recommendations, which we hope will help realize the vision of a poverty-free Ontario. We look forward to working with you in making this a reality.

The Chair (Mr. Shafiq Qaadri): Thank you. We have about three minutes for questions, beginning with Ms. Van Bommel.

Mrs. Maria Van Bommel: Just going through some of the things that you highlighted, and I noticed that you have others as well—your comment, "A comprehensive strategy must not exclude adults." I think we've been hearing that very loud and clear from many, many people. I don't think I saw that when I read it, but the perception in the community is that we have somehow excluded adults. Like I said, we certainly have heard that very loud and clear.

But we've also heard from other groups who feel that we need to start listing and be more specific. Do you feel that that's important, or would the term "adults" be broad enough that it would capture all the people who should, at some point, benefit from a strategy on poverty?

Ms. Doris Grinspun: I would ask my colleague Lynn

Anne to intervene, with her expertise on this.

Ms. Lynn Anne Mulroney: We by no means want to exclude anybody. We see a vision of an Ontario where every single person in the province should have the ability to have what they need to be healthy and not be excluded. When we are figuring out what exactly to do, it would be important to figure out what the groups are that might need special attention.

We do know, as other speakers have mentioned, that women, racialized communities, people from aboriginal communities, the disabled—there's a whole number of people who might need special attention. We wanted a comprehensive approach that meets everybody's needs.

Nobody should be living in poverty.

Mrs. Maria Van Bommel: So you think we would be at risk of excluding someone if we were to do a list per se, or do you think that using the term "adults" would capture all of them?

Ms. Doris Grinspun: If a list will assist you in moving to clear targets for the elimination of poverty in Ontario, then we will welcome a list, and we will probably be suggesting additions or augmentations to the list.

At the end of the day, what nurses want to see is an Ontario free of poverty. For some of us who have chosen to come to this country from other countries that are not as well-to-do as ours, it's very concerning to see these levels of poverty.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Van Bommel. I need to intervene now. To Ms. Munro.

Mrs. Julia Munro: I'd like to comment on page 6, on recommendation 8, where you suggest that the annual report should be tabled in the Legislature. Certainly, this is a common theme that we've heard. As you know, there's no such responsibility in the bill as it is currently.

I also wondered if you wanted to comment on the fact that every five years, there's also a strategy-setting opportunity as well as the annual report, and whether or not you had looked at that five-year process as one as well that should be within the public domain. Ms. Doris Grinspun: Yes, we are requesting the tabling of progress so that the public can be aware of how much progress we have or have not made. We also, as you know, are requesting the full review, comprehensive review, after four years. That will allow us, together, to build the next five years of strategy.

Mrs. Julia Munro: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Munro. Mr. Prue.

Mr. Michael Prue: A couple of questions, if I can get them in. The first one is that you want—"An independent person or group ... should be appointed." Do you see this person like a commissioner? We have an environment commissioner, or the Ombudsman, who report to the Legislature and not to the government. Is that what you see, that kind of person?

Ms. Doris Grinspun: Absolutely, and with a process that is transparent and open to the public.

Mr. Michael Prue: All right. So you think that it ought not to be a government appointee but a Legislature appointee.

Ms. Doris Grinspun: That's absolutely correct.

Mr. Michael Prue: Okay. That's the first one. The second one is on the consultation process to involve those with direct experience with poverty. How do you suggest that these people be chosen? Right now, when the government chooses and puts their nominees forward, the opposition has to just say that we don't like them, which isn't always kind. Do you see that the groups themselves—the 25 in 5, the nurses' association, people like that—would put forward nominees?

Ms. Doris Grinspun: Absolutely. I suggest that we all do, but also people living in poverty, experiencing poverty, should be able to put their names in and be supported to participate in the process and encouraged to do that. So not only groups like ours but people actually living in poverty should be able to access that directly.

Mr. Michael Prue: I love both of your suggestions. Thank you.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Mulroney and Ms. Grinspun, for your deputation on behalf of the Registered Nurses' Association of Ontario.

CANADIAN MENTAL HEALTH ASSOCIATION, ONTARIO

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward: Michelle Gold and Pam Lahey of the Canadian Mental Health Association.

As you're being seated: You've seen the protocol. I invite you to please begin.

Ms. Michelle Gold: Hello and good afternoon. My name is Michelle Gold and I'm the senior director of policy and programs with the Canadian Mental Health Association, Ontario. With me is Pam Lahey, community mental health analyst. We're with the Canadian Mental Health Association. We're a provincial association com-

mitted to improving services and supports for people with mental illness and their families, and to the promotion of mental health for all people in Ontario.

I wanted to talk very briefly about the impact of poverty on mental health and on people with mental illness. Poverty, as you can imagine, has a devastating impact on quality of life and often leads to poor mental health. The evidence indicates that poverty, and the material and social deprivation associated with it, is a primary cause of poor health among Canadians. People may experience economic hardship as a result of a variety of difficult life situations. The resulting lack of monetary resources creates not only low income but poverty in other essential resources such as housing, education and employment. As a result, of course, it impacts one's mental health, and in particular, situations of depression and anxiety often follow this route of stress and strain.

For people who are predisposed to mental illness, losing stabilizing resources such as income, employment and housing can increase the risk factors for mental illness and relapse. Experiencing a mental illness can interrupt a person's education and their career path and result in diminished opportunities for employment. Lack of secure employment, in turn, affects one's ability to earn an adequate income. As a result, people with a mental illness often remain in chronic poverty.

We're encouraged that the government has proposed a bill and has developed a strategy which will enshrine poverty reduction efforts in law. We are proposing several amendments to existing sections of the bill, as well as recommending several additional clauses that we think need to be addressed, due to omissions, that can help strengthen Ontario's goal to reduce poverty.

Regarding the preamble, we recognize that the bill establishes a vision that guides the poverty reduction strategy. We, like many others, feel that the vision should be broadened and that it should be guided by a vision for a poverty-free Ontario.

Consistent with Ontario's plan to measure progress in reducing poverty as defined in the poverty reduction strategy and in section 3, we recommend an amendment to the preamble so that the language of the preamble signifies the government's obligation to act to reduce poverty as opposed to leaving it merely as a commitment. We think that the language would be strengthened if it were amended to say that the government of Ontario will regularly consult with respect to the strategy, it will measure success, and it will report annually on the success of the strategy.

Regarding the principles, we're pleased to see that the poverty reduction strategy and the bill recognize the heightened risk of poverty among people with disabilities. Evidence indicates that individuals with disabilities, including people with serious mental illnesses, experience more poverty and for longer periods of time than Ontarians who do not have a disability. A significant number of people with disabilities receive income support, and an overwhelming number of them are adults. In fact, 86% of people receiving income support from the

Ontario disability support program caseload are single, or couples without dependent children. As you've heard before, we also believe that adults need to be included and explicitly recognized in the poverty reduction strategy. We would like to recommend a way to address this in the next section of the bill.

In addition, the commitment and cooperation section of the principles—that's where we see the principles saying that they need to address children and families. But while we recognize that children and families are a first priority for the government, children eventually reach adulthood, some individuals will choose to not cohabitate in families due to personal preference or disadvantage, and independent seniors are often significantly affected by poverty as well. We think that recognizing adults needs to also be enshrined in the principles of the bill, and we therefore recommend that adults be referenced in paragraph 7, subsection 2(2).

Regarding the contents of the poverty reduction strategy, we agree that specific poverty reduction targets, initiatives and indicators be linked to the determinants of health, and they need to be written into the legislation. We think that in order for this to happen, part of the strategy, in fact, needs to include sustainable funding. We feel that this needs also to be included in the bill.

Regarding the targets themselves, we agree that if we're going create progressive targets to reduce poverty in the long term, the review needs to be included under section 6. But we think that the option of "or otherwise" in this section is rather vague. We want to ensure that there isn't a way out and that measuring the progress of poverty reduction does take place. Therefore, we recommend that the option of "or otherwise" be removed from the bill and, therefore, we can have more progressive targets identified and it will be ensured that it happens.

Regular reviews are essential to ensure that poverty reduction targets remain timely, relevant and effective. We recommend that an independent body of stakeholders be appointed by the government to lead the review. This stakeholder committee should include people with experience living in poverty. This will ensure that any new strategies and revisions align with the identified needs of those it's intended to serve.

In addition, we need to make sure that it's a timely review. We therefore recommend that the review itself take no longer than six months, and that this be inserted in the bill itself, and that the review should be tabled in the Legislature within two months of its completion so that there isn't a protracted period where the information isn't coming forward.

Those are the main things that we wanted to address today. We're here to take your questions. We think that the government has made a good start, but we think the bill can be strengthened. We'd like to work in support of the government on this initiative. We would be happy to receive any questions from you.

The Chair (Mr. Shafiq Qaadri): Thank you. We have about two minutes per side. Ms. Munro.

Mrs. Julia Munro: Thank you very much. I certainly appreciate the comments that you've made here because

many of them, of course, we've heard. There's just one area that I wondered if you would comment on. When you talk on page 3 about the poverty reduction target, I'm just wondering if you have advice in terms of the need to establish a baseline in terms of measurements so that there can be a very clear demonstration of movement in certain areas of success and how it's to be measured. Do you have any concerns about the need to set those kinds of baseline indicators?

Ms. Pam Lahey: We do, and we've given it considerable thought. We would like to see a cumulative effect so that each target that is set every five years after the review is greater than the target that was set before that, so that in the end, we see an increased reduction of poverty among adults and children.

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Some of those specific indicators were written into the strategy itself—and you could go back and revisit that—such as the social deprivation index. We applaud the government for establishing it, and we think that the development of a social deprivation index really needs to begin. We would be happy to assist in any way we can in that process. I think that will provide a broad set of indicators and will really indicate very concretely what goods and products are needed to increase quality of life for people who are living in poverty.

We also would go back to additional indicators to measure poverty, such as maybe the market basket measure, which was adopted by the Newfoundland government—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Munro, Mr. Prue.

Mr. Michael Prue: Yes, just back to the whole question of people who come to review: You heard the previous deputant when I asked the question about having a commissioner. Do you prefer, or do you think that there's a need, to have a commissioner reportable to the Legislature? Or have you thought about that?

Ms. Pam Lahey: We have thought about that. In our submission, you may note that we've asked for an independent body that will lead the review and that would be government-appointed. But it's very clear that it's an independent body made up of people living in poverty, and they would not just be consulted. It wouldn't just be an advisory body. They would lead the review.

Ms. Michelle Gold: Did you say "commissioner" or "commission"?

Mr. Michael Prue: Well, commission or commissioner. I mean, right now, we have an integrity commissioner, an environmental commissioner, an Ombudsman. They all report to the Legislature, not the government.

Ms. Michelle Gold: Right. I think a commission would be what is needed.

Mr. Michael Prue: These people you propose be chosen, would you choose them in the regular way, or would you allow the groups like 25 in 5, the nurses' association, yourselves, to have the opportunity to put forward nominees?

Ms. Michelle Gold: I think you need to do both, because there are different ways to participate in a public

process. So, for the commission or committee itself, you could accept some nominations from some of the key groups that have been proponents of this. In addition, it should be opened up to others. As Doris said before, I agree that there needs to be support for people to participate in a process they may not be familiar with.

Ms. Pam Lahey: So, both. There's not just one way to recruit to a commission.

Mr. Michael Prue: If there's time, you want some things put into the preamble and not the legislation. Can you tell me why you want it in the preamble and not in the legislation—consultation, measurement, reports?

The Chair (Mr. Shafiq Qaadri): Sorry, I'll need to intervene there.

Mr. Michael Prue: There you go. I tried.

The Chair (Mr. Shafiq Qaadri): To the government side, and Ms. Van Bommel.

Mrs. Maria Van Bommel: I'm going to follow up on where Mr. Prue was going, because I know exactly where he's leading. Again, a preamble is not binding, whereas when it's in the legislation, it is. My curiosity was the same, as to why you would make those suggestions for the preamble and not for the body of the legislation.

Ms. Michelle Gold: I think it could definitely go into the legislation itself. The preamble is not as binding as what the actual act will be. So, yes, you're quite correct that it could go into the actual body of the bill.

Mrs. Maria Van Bommel: I also want to go back to page 4 of your presentation, where you talk about "a cumulative reduction." We've had other suggestions where the words have been "substantive reduction." I understand your concern that people want to make sure that there are clear and decisive reductions, and that they are major reductions, not just little increments at a time. But can you explain the whole concept of cumulative? Is that cumulative based on today, and you would say in five years, we would expect—

Ms. Michelle Gold: That's right, that it's progressive.

Mrs. Maria Van Bommel: —that when we reach our
25 in 5, and then are we going to—how would you—

Ms. Michelle Gold: Actually, in fact, we need both, but cumulative in terms of progressive and increasing and expanding. It also would need to be substantive.

Mrs. Maria Van Bommel: Yes. I'm just a bit confused on where you want to go with this. That's my—

Ms. Pam Lahey: For example, if the target led us to pull 100,000 people out of poverty today, then in five years, the target that would be set would have the potential to pull 200,000 people out of poverty. In that way, we are working toward a poverty-free Ontario and—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Van Bommel, and thanks to you, Ms. Gold and Ms. Lahey, for your deputation on behalf of the Canadian Mental Health Association, Ontario division.

INJURED WORKERS' CONSULTANTS

The Chair (Mr. Shafiq Qaadri): I would now call our final presenters, Mr. Tilley, M. Hudon, Mr. Mc-

Kinnon, Ms. Lunansky and Mr. Buonastella, on behalf of the injured workers' community clinic.

Je comprends que nous avons un francophone aussi, ou non ?

Interjection: Richard, oui.

The Chair (Mr. Shafiq Qaadri): Bienvenue à tous.

You've seen the drill: 15 minutes in which to make your presentation. I invite you to begin now.

Mr. John McKinnon: Thank you, Mr. Chair, and good afternoon, members of the committee. I'll just occupy this seat for a minute to introduce our presentation and then I'll turn it over to one of my copresenters.

My name is John McKinnon. I'm with Injured Workers' Consultants community legal clinic. With me today, on my right, is Eddie Tilley, an injured worker and a member of the Bright Lights Injured Worker Group that meets in our legal clinic. On my immediate left is Ms. Laura Lunansky, a staff member with Injured Workers' Consultants, and on my far left, Richard Hudon, an injured worker and a member of our community board of directors. About to take my seat in a minute is my colleague Orlando Buonastella, who is also a staff member with Injured Workers' Consultants.

Injured Workers' Consultants is a community legal aid clinic, a clinic that specializes in workers' comp. We are one of 79 community legal aid clinics across the province that deals with a variety of issues that fall under the catchment area of poverty law. Our mandate includes, as well as case-by-case representation, addressing the systemic or some of the root causes of poverty in our community. So that's what we'd like to talk to you about today: a different community than I think you've heard about, although you did hear from the Thunder Bay injured workers' group yesterday, I believe.

Before I turn it over to Mr. Buonastella, I'd also just like to acknowledge the support that we have this afternoon from the Women of Inspiration injured workers' group, who made a special trip down here to watch the committee proceedings.

With that, I'll turn it over to Mr. Buonastella.

Mr. Orlando Buonastella: The research is clear: Injured workers are part of the fabric of poverty in Ontario. As Steve Mantis told you last night, injured workers ask, "Why are we not clearly part of the solution, part of the poverty reduction strategy?" Our brief details the research that documents the poverty of injured workers. I want to touch on three examples of that, and I turn to page 2 of our brief.

Many injured workers unfortunately have to rely on social assistance rather than the workers' compensation system. In 2005, there were 3,148 injured workers on the Ontario disability support program, ODSP, who were also in receipt of WSIB benefits, clearly lower than ODSP. The actual number is much higher because these figures do not take into consideration those who are no longer on WSIB benefits or who never got into benefits from the system but should have.

Non-reporting of injuries—and I'm looking further down—is a big problem. In 2008, there was an actuarial

firm called Morneau Sobeco that estimated that there were perhaps 25,000 unreported workers' compensation claims in 2007. If you do the math, you can see what an issue that is for the ODSP system and what kind of downloading occurs.

Homelessness: In 2006, the Street Health Community Nursing Foundation surveyed the homeless population and found that 57% of the homeless population reported that a workplace injury played a role in their becoming disabled. About half of them—slightly less than half—had received workers' compensation benefits in the past, but no longer. So this gives you an idea of the kind of downloading that takes place on the ODSP system and how injured workers are part of the poverty fabric in Ontario. And it wasn't supposed to be. The system was supposed to be taking care of injured workers because injured workers lost the right to sue, and it no longer plays that role for the permanently disabled.

I'll turn it over to Laura Lunansky for some more

comments.

Ms. Laura Lunansky: Our written submission will address the poverty of injured workers in a bit more detail, particularly the problem of deeming, so I am just going to focus on two ways we think this bill can be improved upon.

The first thing is that we think the bill could be strengthened by including all of the government in the poverty reduction strategy. It's not clear, from the present wording of the bill, whether it intends to include agencies, boards and commissions, but we hope that after hearing from us today, you will agree that they should be included. We think that adding commissions, boards and agencies, including the WSIB, to the initiative and including them as part of the solution would be beneficial to the end goal of reducing poverty.

More specifically, we have a few suggestions as to how the WSIB could be addressed. First of all, we would like the bill to ask the WSIB to formally recognize the barriers and stigmas that injured workers face as persons with disabilities, particularly in finding sustainable employment. Second, we would like Bill 152 to ask the WSIB to collect information on poverty rates and employment rates for injured workers and to disclose the information that they collect. This will give us a better idea of the scope of the problem, and it will allow us to better identify solutions. Finally, we would like the bill to ask the WSIB to formulate and implement strategies that address the poverty of injured workers. For instance, we think there's a lot of room in policy reform, and that would be a very good place to start with that. That's my first suggestion.

My second suggestion for improvement is something I'm sure you've been hearing a lot, but it's worth repeating, and that is that 25% is a good goal, but it's a modest goal. We think you can do better, specifically in the case of injured workers. Historically, the main goal of workers' compensation has been to insulate workers against poverty. You can see from the statistics that we

have in our submission and from what my colleague has told you about that the current legislation is not really doing a very good job of that.

Changes to the legislation and policy are one way we can eradicate poverty for injured workers. This would free up resources such as health care and social benefits. This could then be put towards the broader goal of eliminating poverty for everyone across Ontario.

Thank you for your attention today. I'm now going to turn things over to our injured workers, who are going to tell you a little bit about their own experiences with poverty.

Mr. Eddie Tilley: Hi, my name is Mr. Tilley, and I was injured at work. I was a hard-working man, and I ended up being injured at work. I'm here today to give a personal testimony as someone who's living in poverty and somebody who has fallen through the WSIB cracks.

When I got injured, I was accepted into the LMR program, labour market re-entry. I was put into a bunch of courses that were probably too difficult for me to get through as it was, with the type of education that I've had in my lifetime. The courses that they did put me through stated that you needed basic computer experience in order to even get into the entry level of it. I didn't have that, so I kept falling back and falling back and falling back. Even with all of these courses, nothing would have worked out. I ended up with non-compensable injuries: two frozen shoulders and a hip problem. With those, I couldn't finish my courses, and I ended up being demoted to ODSP.

Now, I haven't eaten all day today, but after we leave here we are going to have a meeting with Injured Workers' Consultants, and they're going to feed me tonight. I have a modest one-bedroom apartment in the Beaches, and in order for me to sustain that one-bedroom apartment, I have to eat at the Good Shepherd. The Good Shepherd centre is closed down, has been closed down for the last couple of weeks and is going to be closed down for another week. What I have to do: I have 21 different places here that I have to go through as to whether they are going to feed somebody today. Some of them are just good for Tuesdays, some of them are good for all week and some of them are just good for maybe a breakfast, a lunch or whatever. Yeah, you're definitely looking at poverty right here.

In order for me to even get downtown, I have to do volunteer services, because welfare will offer you \$100 out of \$109 to do that. So if it wasn't for these places right here, you would probably see a whole lot more people dying in the streets. They are dying of hunger as it is, but it's only these places that are helping them survive. Thank you.

M. Richard Hudon: Bonjour. Mon nom est Richard Hudon, accidenté de travail qui combat la pauvreté depuis 48 ans. Vous me comprenez tous?

Le Président (M. Shafiq Qaadri): Ils ont accès à la traduction. Continuez.

M. Richard Hudon: D'accord. Merci beaucoup.

En mai 1961 alors, j'avais 17 ans. J'ai perdu ma jambe gauche, amputée en haut du genou suite à un accident sur un chantier de construction. J'étais, à ce moment-là, un

apprenti charpentier.

Compensé sous le vieux programme de compensation d'avant 1990 avec une déshabilité établie à 51 %, avezvous une petite idée, chers membres du comité, de combien était ma pension annuelle voilà 48 ans passés? C'était 62,56 \$. Je me suis mis à clamer et à crier très fort, « Vive la pauvreté! » À 62,56 \$ par mois—alors, j'avais 17 ans—on ne pouvait absolument pas vivre. J'étais devenu un pauvre. « Vive la pauvreté! » Pourtant, personne ne remettait en question le fait que j'étais devenu un amputé.

Après maintes luttes de la part des accidentés du travail pour l'indexation de nos pensions, nous espérions que nous sortirions de la pauvreté. Savez-vous combien je reçois aujourd'hui, après mes 48 ans de combat contre la pauvreté? Savez-vous? C'est 952,65 \$. Je suis encore sous le seuil de la pauvreté, même avec 952,65 \$ par mois.

Moi, j'ai attendu de la part des gouvernements répétitifs, depuis 48 ans, qu'un projet de loi soit proposé pour la réduction de la pauvreté. Je suis plus chanceux que certains de mes confrères accidentés qui, eux, ne sont pas ici aujourd'hui à cause qu'ils sont décédés dans la pauvreté. Je n'ose pas croire le sort qui a été réservé à leurs enfants.

La preuve que nous soumettons dans notre mémoire vous démontre clairement que la majorité des accidentés du travail de l'Ontario sont effectivement sous le seuil de la pauvreté : ils vivent en pauvreté. J'ose espérer que les membres du comité, ainsi que de notre gouvernement, reconnaîtront le statut des travailleurs accidentés comme un groupe ciblé dans cette législation et en tiendront compte.

Je vous remercie beaucoup.

The Chair (Mr. Shafiq Qaadri): The presentations are concluded?

Interjection: Yes.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll have about a brisk one minute per side. Ms. Van Bommel.

Mrs. Maria Van Bommel: At this point, I really just want to say thank you very much. Your presentations have been very moving, certainly. Thank you again.

The Chair (Mr. Shafiq Qaadri): Ms. Munro.

Mrs. Julia Munro: Yes, thank you. I want to just compliment you on being able to come here and present

your personal story. I want to also recognize, as others have done, that this is a category that should receive treatment—when I say "treatment," I mean accommodation—appropriate to the issues that you face. I would certainly urge the government, when they're looking at rolling out any strategies, that they have to be tailored to people like you who need special attention and different kinds of benchmarks.

Interruption.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Munro. As you know, I believe that is a vote coming. You have one minute, Mr. Prue.

Mr. Michael Prue: It may in fact be, or it may not; I'm sure somebody is going to hand over a form for tomorrow.

In any event, you've added something brand new that no one else has talked about, and that is to include the agencies, boards and commissions. You've mentioned the WSIB. Are there any others that come immediately to your mind? I agree the WSIB has to be there. Do any others come to your mind at all that need to be included?

Ms. Laura Lunansky: There are none that come to mind immediately. Obviously we're in the best position to speak about the WSIB because that's the kind of work we do. There probably are others, but I think the WSIB is in a unique position because they do provide income replacement benefits for workers.

Mr. Michael Prue: Right. In your view, have there been enough increases—obviously not—to people who have been injured on duty over the years to sustain

themselves above the poverty line?

Mr. Orlando Buonastella: No. The stats are very clear about that. Permanently disabled injured workers have terrible problems: In terms of the cost of living, they're falling behind; and in terms of employment, the unemployment rate among injured workers is somewhere between 60% to 80%. All of them, if they belong to the new system, are—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Prue. Thanks to you, Mr. Tilley, Mr. McKinnon, Mr. Buonastella et vous aussi, monsieur Hudon, for your presentation on behalf of Injured Workers' community clinic.

If there's no further business before this committee, I remind members that the deadline for filing amendments is 12 noon, Thursday, April 23. The committee is adjourned until clause-by-clause consideration at 2 p.m., Monday, April 27. Committee adjourned.

The committee adjourned at 1801.





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Poverty Reduction Act, 2009

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Lundi 27 avril 2009

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Loi de 2009 sur la réduction de la pauvreté

Chair: Shafiq Qaadri Clerk: Katch Koch Président : Shafiq Qaadri Greffier : Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Monday 27 April 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Lundi 27 avril 2009

The committee met at 1415 in committee room 1.

POVERTY REDUCTION ACT, 2009 LOI DE 2009 SUR LA RÉDUCTION DE LA PAUVRETÉ

Consideration of Bill 152, An Act respecting a longterm strategy to reduce poverty in Ontario / Projet de loi 152, Loi concernant une stratégie à long terme de réduction de la pauvreté en Ontario.

The Chair (Mr. Shafiq Qaadri): Members of the committee, I invite you to begin with me Bill 152, An Act respecting a long-term strategy to reduce poverty in Ontario. As you know, we're here for clause-by-clause consideration. Before presentation of the first motion and first suggested amendment, are there any comments of a general nature before the committee?

Seeing none, we'll begin to entertain motions. We have Mr. Prue of the NDP.

Mr. Michael Prue: The first motion.

The Chair (Mr. Shafiq Qaadri): I'm sorry, there's section 1. For section 1, we've not received any amendments to date, so shall section 1 carry? Carried.

Section 2, NDP motion 1, Mr. Prue.

Mr. Michael Prue: I move that subsection 2 (1) of the bill be amended by striking out "that is guided by a vision of a province where every person has an opportunity to achieve his or her full potential" and substituting "that is guided by a vision of a poverty-free province where every person has an opportunity to achieve his or her full potential".

If I may just briefly, this is including the words "poverty-free". We borrowed this from Quebec and Newfoundland and Labrador. Their ultimate goal is to eliminate poverty. We believe that should be the ultimate goal here in Ontario as well.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Prue. Any further comments? Ms. Van Bommel.

Mrs. Maria Van Bommel: Thank you. I would like to draw the committee's attention to the second motion, which is coming up, in which we talk about Ontario being a leading jurisdiction in poverty reduction. Our feeling is that we are, first of all, moving forward with this bill that would require that all future governments would have to have a poverty reduction strategy in place with targets, indicators and initiatives in the strategy. By being a leading jurisdiction in poverty reduction, we

create an environment where we want everyone to be part of the solution.

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We feel that everyone has a role to play in poverty reduction, and so while government is being asked to create strategies, we want to make sure that everyone in Ontario knows that this is an opportunity-based strategy where there is, as Mr. Prue has said, an opportunity to achieve everyone's full potential. But we feel that we need to work at being a leading jurisdiction in this.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Van Bommel. Any further comments?

Mr. Michael Prue: Since we've started to deal with number 2, I could agree with number 2 if the last word in subsection (a) was eliminated. I would be very happy to withdraw mine because I think that would cover it. I think that should be the ultimate goal, to eliminate poverty, not just to reduce it. I have no problem with your amendment, but if the goal is not to eliminate poverty, then what is the goal? It's like a half life of an atomic substance. It goes down by half, by half, by half, and a million years later there's still a little bit left.

Mrs. Maria Van Bommel: I think we need to address the whole issue of poverty reduction in terms of what our goal is, and we feel—

Mr. Michael Prue: Is your goal not to eliminate it, though? That's all I'm asking. Is that not the goal?

Mrs. Maria Van Bommel: We want to make sure we're a leading jurisdiction in this.

Mr. Michael Prue: Okay.

The Chair (Mr. Shafiq Qaadri): Seeing an impasse, we'll proceed to the vote. Those in favour of NDP motion 1? Those opposed? I declare NDP motion 1 to have been defeated.

Government motion 2, Ms. Van Bommel.

Mrs. Maria Van Bommel: I move that subsection 2(1) of the bill be struck out and the following substituted:

"Poverty reduction strategy

"2(1) The government of Ontario shall maintain the poverty reduction strategy set out in Breaking the Cycle: Ontario's Poverty Reduction Strategy published on December 4, 2008, or another poverty reduction strategy,

"(a) that reflects Ontario's aspiration to be a leading

jurisdiction in reducing poverty; and

"(b) that is guided by the vision of a province where every person has the opportunity to achieve his or her full potential and contribute to and participate in a prosperous and healthy Ontario."

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments?

Mr. Michael Prue: Just for the record, I think this is nebulous. If the government is serious, and if the government wants to adopt a second strategy, the strategy should be to eliminate poverty. Again, I don't know what a strategy is to be number one. Number one at what? To be the leading jurisdiction at what?

I'm simply saying that this is going to cause the government no harm by substituting the word "reducing" with "eliminating." I'm not setting a time frame. It might be five or 10 or 15 years. I'm not trying to be utopian. I'm trying to say that has to be the ultimate goal of every government—this one and future ones. I want to eliminate it. I don't think there's a member in this whole room who doesn't want to eliminate it. I just don't understand why you are content on being a leading jurisdiction.

Mrs. Maria Van Bommel: As a jurisdiction, we all understand that there's an imperative to reduce poverty. We need to make sure that we have the economic ability and opportunities in place for everyone to be at their full potential, but I still feel that leading jurisdiction is an important thing for us to play. This is a pragmatic way of approaching the whole issue of poverty reduction.

The Chair (Mr. Shafiq Qaadri): I believe we're at the same impasse as previous, so we'll now proceed to the vote, unless there are further comments. Those in favour of government motion 2? Those opposed? Government motion 2 carries.

NDP motion 3, Mr. Prue.

Mr. Michael Prue: I move that subsection 2(2) of the bill be amended by striking out the portion before paragraph 1 and substituting the following:

"Principles

"(2) Every new or modified long-term poverty reduction strategy is to be based on the following principles, and Ontario's laws, policies and practices must be consistent with the following principles:"

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Prue. Comments? Mrs. Van Bommel.

Mrs. Maria Van Bommel: I find this one hard to understand, because I think what you're saying here is that you're going to ask that all Ontario laws, practices and policies be consistent with the principles of the Poverty Reduction Act, and I'm not sure how that would work. How would you impose that upon things such as the Mining Act or the Highway Traffic Act?

Mr. Michael Prue: If the question is asked of me, this is what Quebec does: In every bill that is brought forward, the various ministers are asked to say whether or not there is a policy impact, and whether or not what is being suggested will aid or be neutral in terms of poverty reduction. With some things, like the Mining Act, I guess the minister has a fairly easy job. They stand up and say, "No, this is not relevant to this." All the other ministers

are asked to comment on how and if it will reduce poverty, before the bill is allowed to proceed.

Mrs. Maria Van Bommel: So does that not become a bit burdensome, in the sense of ministries that would not have any response to give to this type of thing, in every piece of legislation that came forward before them?

Mr. Michael Prue: It's my understanding that 15 or 20 ministers either sign something in advance or stand up in the House and make a two- or three-sentence statement, and the bill commences.

Mrs. Maria Van Bommel: I'm not sure that I can support that one. I find it a bit burdensome on ministers and ministry staff.

The Chair (Mr. Shafiq Qaadri): Any further comments on NDP motion 3? Seeing none, we'll proceed to the vote. Those in favour of NDP motion 3? Those opposed? NDP motion 3 is defeated.

Government motion 4, Ms. Van Bommel.

Mrs. Maria Van Bommel: I move that subsection 2(2) of the bill be amended by striking out the portion before paragraph 1 and substituting the following:

"Principles

"(2) Every new or modified poverty reduction strategy is to be based on the following principles:"

The Chair (Mr. Shafiq Qaadri): Thank you. Comments? We'll proceed to the vote. Those in favour of government motion 4? Those opposed? Government motion 4 is carried.

NDP motion 5, Mr. Prue.

Mr. Michael Prue: I move that paragraph 1 of subsection 2(2) of the bill be amended by adding at the end "irrespective of their race, aboriginal status, gender, ability, family status or immigration status".

I understand that the government will be amending this in 5A, but just by way of background, this was a recommendation of several of the groups, including the Colour of Poverty. It seems to me very fair that we set out the places or the circumstances under which people find themselves in poverty. I certainly have no objection, and will have no objection, to government motion 5A when it comes forward, but that was the rationale of putting this motion.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr.

Mrs. Maria Van Bommel: We certainly appreciate that. As was discussed, we will move the amendment on 5A.

The Chair (Mr. Shafiq Qaadri): Thank you. Those in favour of NDP motion 5?

Mr. Michael Prue: Don't we have to vote on the amendment first?

Mrs. Maria Van Bommel: Yes, I'm going to amend the amendment, if that's okay.

The Chair (Mr. Shafiq Qaadri): It's a separate motion.

Mr. Michael Prue: A separate motion, okay.

The Chair (Mr. Shafiq Qaadri): Those in favour of NDP motion 5?

Mrs. Maria Van Bommel: Can I-

Mr. Michael Prue: I wonder if we could defer that. Mrs. Maria Van Bommel: Okay, let's clarify here.

Mr. Michael Prue: I wonder if we can defer it until after 5A, because if 5A doesn't pass, for some miraculous reason, I still want 5 to go forward. Is that possible?

Mrs. Maria Van Bommel: Is that possible?

The Chair (Mr. Shafiq Qaadri): You can stand it down, yes.

Mr. Michael Prue: Stand it down, okay.

The Chair (Mr. Shafiq Qaadri): We'll now entertain government motion 5A.

Mrs. Maria Van Bommel: I move that paragraph 1 of subsection 2(2) of the bill be amended by adding at the end "and, in particular, persons who face discrimination on the grounds of their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability".

The Chair (Mr. Shafiq Qaadri): Comments?

Mr. Michael Prue: Just to say that I find it more allencompassing, and thank you very much.

Mrs. Maria Van Bommel: Thank you.

The Chair (Mr. Shafiq Qaadri): Those in favour of government motion 5A? Those opposed? Government motion 5A carries.

We will return, then, to NDP motion 5. Those in favour?

Mr. Michael Prue: I'm prepared to have it declared redundant.

The Chair (Mr. Shafiq Qaadri): It's out of order, therefore annulled.

NDP motion 6.

1430

Mr. Michael Prue: I move that paragraph 3 of subsection 2(2) of the bill be struck out and the following substituted:

"Recognition of racism and other forms of discrimination

"3. Racism and other forms of inequity and disparity have long existed and continue to exist in Ontario. The poverty reduction strategy must recognize racism and other forms of discrimination, on the basis of gender, disability, aboriginal status, family status and immigration status, and that discrimination results in heightened risks and disproportionate levels of poverty among groups subject to discrimination."

I think it's clear what it stands—for the record, I think that 5(a) covered some of that. I would still move it all the same I am content that it has its fate.

the same. I am content that it has its fate.

The Chair (Mr. Shafiq Qaadri): Thank you. Those in favour, if there are no comments, on NDP motion 6. Those opposed. NDP motion 6 is defeated.

Government motion 7.

Mrs. Maria Van Bommel: I move that paragraph 3 of subsection 2(2) of the bill be struck out and the following substituted:

"Recognition of diversity

"3. That not all groups of people share the same level of risk of poverty. The poverty reduction strategy must recognize the heightened risk among groups such as immigrants, women, single mothers, people with disabilities, aboriginal people and racialized groups."

What this motion does is add the word "women" to that particular section of the act.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. Munro?

Mrs. Julia Munro: Yes, just for the record, I wanted to say that if you look at the work that Roger Martin did on competitiveness in his research on poverty, there's one group that is not included in the list here, and that would be people without high school graduation. Obviously, the intent of this is the issue of diversity, but I would just want it to be on the record that that is very much an at-risk group for poverty.

The Chair (Mr. Shafiq Qaadri): If there are no further comments, we can proceed to the vote. Those in favour of government motion 7? Those opposed? Carried.

Government motion 8, Ms. Van Bommel.

Mrs. Maria Van Bommel: I move that paragraph 6 of subsection 2(2) of the bill be struck out and the following substituted:

"Involvement

"6. That Ontarians, especially people living in poverty, are to be involved in the design and implementation of the strategy.

The Chair (Mr. Shafiq Qaadri): Comments? Mr. Prue.

Mr. Michael Prue: I'm thankful for this motion being put forward. You heard me many times in the House complaining of going to the meetings in Peterborough, Durham, Ottawa and other locations and being denied entry. But it wasn't so much that I was denied entry to the meetings, it was that the poor who were standing outside were denied entry to those meetings. I think that by putting this in, we will ensure that future governments will not make that mistake. The poor have every right to discuss matters that will deeply affect them, their families and their livelihoods. I think that if you're ever going to discuss poverty without involving the poor in a dynamic and ongoing way, such poverty strategies will be doomed to failure. So I will be voting for this motion.

Mrs. Maria Van Bommel: And I think we also heard during the public hearings from 25 in 5, who asked that we be much more explicit in who would be involved, not just in poverty reduction but in the design and implementation of a strategy. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll proceed to the vote then. Those in favour of government motion 8? Those opposed? Motion 8 is carried.

NDP motion 9. Mr. Prue.

Mr. Michael Prue: I move that paragraph 7 of subsection 2(2) of the bill be amended by striking out "to develop strong and healthy children, families and communities" and substituting "to develop strong and healthy children, adults, families and communities."

The Chair (Mr. Shafiq Qaadri): Comments?

Mr. Michael Prue: I think what we're doing is just simply adding the word "adults," and youth, and I think that is important. We had a number of groups come

forward and state that the poverty strategy to that point was narrow, or was too narrow, and seemed to involve children to the predominance of other groups. What we're simply trying to say is that other groups are of necessity involved as well. To add adults and youth will make sure that it encapsulates everyone.

Mrs. Maria Van Bommel: I would like to move an amendment to this amendment, adding the word "youth," as well because we certainly appreciate the intent of what's happening here and what Mr. Prue is proposing. We think that we can enhance it further by adding the word "youth" as well.

Mr. Michael Prue: I would consider it a friendly amendment, if it causes any difficulty.

Mrs. Maria Van Bommel: We've caused some serious confusion here today.

The Chair (Mr. Shafiq Qaadri): I'll call for the will of the committee: Shall the amendment to the amendment carry? Carried.

Shall the amendment, as amended, carry? Carried.

Thus, government motions 10 and 10a are redundant, so we'll move on to NDP motion 11. Mr. Prue.

Mr. Michael Prue: I move that subsection 2(2) of the bill be amended by adding the following paragraph:

"Equitable life chances and equality rights

"8. Strengthening Ontario's human rights laws and enforcement system is essential to the reduction of poverty."

By way of explanation, I believe this is essential. We had some deputants come forward and talk about the human rights laws as they exist, and that in order for poverty to be attacked successfully by the government, the enforcement of the system of human rights needs to be augmented to ensure that they go out and make sure that groups that are at risk, both of abuse and of poverty, are protected.

The Chair (Mr. Shafiq Qaadri): Comments? Ms. Van Bommel.

Mrs. Maria Van Bommel: As much as we understand where Mr. Prue is coming from on this, in terms of the human rights laws and act, I feel really that matters that pertain to the code should stay within the code and not necessarily be addressed through this bill.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote.

Those in favour of NDP motion 11? Those opposed? NDP motion 11 is defeated.

Government motion 11A.

Mrs. Maria Van Bommel: I move that subsection 2(2) of the bill be amended by adding the following paragraph:

"Importance of the third sector

"8. That the third sector, including non-profit, charitable and voluntary organizations, are integral to a poverty reduction strategy by delivering the programs and services that matter to people, by strengthening communities and by making a positive contribution to the economy."

The Chair (Mr. Shafiq Qaadri): Further comments? We'll proceed to the vote, then.

Those in favour of government motion 11A? Those opposed? Government motion 11A carries.

NDP motion 12.

Mr. Michael Prue: I move that subsection 2(2) of the bill be amended by adding the following paragraph:

"Equal opportunity for disabled persons

"9. Meaningful enforcement of the provisions and standards set out by the Accessibility for Ontarians with Disabilities Act, 2005 is required to effectively reduce poverty."

By way of explanation, we believe that the provisions set out in another act, if enforced, would have a meaningful and deliberate effect of reducing poverty. Unless and until there is an enforcement agency and enforcement people checking those out, people with disabilities will continue to be at risk.

The Chair (Mr. Shafiq Qaadri): Comments? Ms. Van Bommel.

Mrs. Maria Van Bommel: During the public hearings, I think we heard from people commending Dr. Marie Bountrogianni for the work she had done on the disabilities act. I know that we are moving forward as a government. We have worked in a collaborative way with the Retail Council of Canada to get an enactment of the disabilities act requirements there. We have moved forward with certain tools, and been successful in getting that started. We've now started consultations for the employment accessibility standard.

As was stated by one of our deputants, I think the act has been a great leap forward for us. At this stage, I'm quite happy to allow the act to move forward as it has, and I don't see any real benefit in having it included here as well.

1440

Mr. Michael Prue: If I could, Mr Chair, the Ontarians with Disabilities Act has a 25-year time frame. Although there is nothing in that act that I would oppose and everything in that act that I would agree with, the problem is that the 25-year time frame is far too long. The enforcement that is being contemplated here, we hope, will speed up the process as it relates to poverty so that people who are living with disabilities will be able to have their claims adjudicated and be supported by the government.

If there is a marginalized group—if there is a group that is almost predominantly in poverty—it is the disabled. All we're saying here is, enforce the provisions of that act as quickly as possible now, as opposed to 25 years from now, and you will do a great deal to eliminate poverty. That's what we're trying to do; that's what we're trying to say.

The Chair (Mr. Shafiq Qaadri): Mrs. Van Bommel. Mrs. Maria Van Bommel: But I'm not sure we could necessarily open up that particular act by going through this act to do it. If the strategy within the original disabilities act is over 25 years, as much as I understand where you're coming from, I don't think we can be doing that through this act as well. If we need to move forward—if the strategy should be to move along quickly on that particular one—then we need to deal with that act specifically and not try to do it through this one.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote, then.

Those in favour of NDP motion 12? Those opposed? NDP motion 12 is defeated.

NDP motion 13. Mr. Prue.

Mr. Michael Prue: I move that subsection 2(2) of the bill be amended by adding the following paragraph:

"Equity and equality

"10. That equity, equality and fairness are integral to a poverty reduction strategy. The poverty reduction strategy must move beyond averages and aggregates to reduce and ultimately eliminate the gaps experienced by groups that are protected under the Human Rights Code."

I think what is being said here is self-evident. The Chair (Mr. Shafiq Qaadri): Comments?

Mrs. Maria Van Bommel: I'm not quite sure of the meaning of "move beyond averages and aggregates." I find that a bit vague. What we're trying to do here is require governments, our own and future governments, to have a strategy in place. I'm a bit confused as to what we're trying to achieve with this motion.

Mr. Michael Prue: Quite frankly, a lot of things we do around here are statistics, and I'm always reminded of what Mark Twain had to say: "There are ... lies, damned lies," and then there are statistics.

What we're trying to say here is that these are individuals and people, and we need to look at what the poverty reduction strategy will do to move beyond those, so that you're not just looking at numbers but looking at individuals and groups of people, to eliminate the gaps they experience. What we're asking governments to do, now and in the future, is to be flexible: Look at what is best for the human condition, not just at numbers on a page.

Mrs. Maria Van Bommel: I think that is what this bill will do. When we talk about the whole issue of developing a strategy, and when we talk about targets, initiatives and indicators, I think we will accomplish that.

The Chair (Mr. Shafiq Qaadri): Thank you, and for the record, "Lies, damned lies and statistics" was Benjamin Disraeli.

Mr. Michael Prue: No, no. Mark Twain came before him.

The Chair (Mr. Shafiq Qaadri): We will now move to the procedure—

Mr. Michael Prue: We can argue about this another time.

The Chair (Mr. Shafiq Qaadri): —for the vote.

Mr. Michael Prue: We argue about stuff all the time, and who said what.

The Chair (Mr. Shafiq Qaadri): The committee is willing to entertain a vote on that too, by the way.

In any case, those in favour of NDP motion 13? Those opposed? NDP motion 13 is defeated.

NDP motion 14.

Mr. Michael Prue: Subsection 2(2), new paragraph 1.

I move that subsection 2(2) of the bill be amended by adding the following paragraph:

"Importance of the third sector

"11. The third sector, including non-profit, charitable and voluntary organizations, are integral to a poverty reduction strategy by delivering the programs and services that matter to people, by strengthening communities and by making a positive contribution to the economy, especially when those who are living in poverty play a key role in managing or being employed by third sector organizations. The third sector must be supported by legislation, funding, policies and practices related to poverty reduction."

It seems to me to be self-evident. I'm also given to understand that the government may be moving an amendment here to delete the last sentence. Although I don't like that, I am certainly aware that the main body of what we're trying to say would be accomplished. I'd like it all—the last sentence: "We think that this will be incumbent upon future governments, future Legislatures, to support poverty reduction by legislation, funding, policies and practices." But I admit that this last sentence may not survive.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. Van Bommel.

Mrs. Maria Van Bommel: As Mr. Prue may recall, I was a little confused looking for 11A, and I had thought we would be attaching it. But the sequence of the numbering is where I got caught. When we passed 11A—this becomes redundant in the sense that what we had agreed to in deleting the last part of it was accomplished in 11A already.

Mr. Michael Prue: No, this is paragraph 11; the last one was paragraph 8, so it cannot be redundant. It might be saying much the same thing, but—

The Chair (Mr. Shafiq Qaadri): We comment not upon the redundancy, but it is a separate motion which is now before the committee and shall be disposed of in the appropriate manner.

Mrs. Maria Van Bommel: In the appropriate manner; okay.

The Chair (Mr. Shafiq Qaadri): We'll proceed, then, to the vote. Those in favour of NDP motion 14? Those opposed? NDP motion 14 is defeated.

I'll now invite Mr. Prue to do NDP motion 15.

Mr. Michael Prue: I am quite surprised that that lost. I move that subsection 2(2) of the bill be amended by adding the following paragraph:

"Good stable jobs in a sustainable economy

"12. All Ontarians are entitled to work in good, stable jobs that promote strong, healthy communities and contribute to environmental sustainability."

The reason this was put forward is that we believe that an economic strategy adopted by the government will have a profound effect on poverty reduction. The more people who are working in good, stable jobs, the more people who are paying taxes, the more people who are contributing to the economy, the stronger and healthier the communities will be, the stronger the contribution to environmental sustainability. All of those things will have profound effects on poverty reduction. We think that a new section 12 is warranted.

The Vice-Chair (Mr. Vic Dhillon): Any further debate? Ms. Van Bommel.

Mrs. Maria Van Bommel: What I know we're trying to do with this bill is to develop a strategy in terms of how the economy is treated. Talking about a stable economy and a sustainable economy is something that is addressed through the budget and through the Minister of Finance. There have been a number of proposals put forward through the budget in terms of training and the building of infrastructure and the supporting of the vulnerable, including our Ontario child benefit, and the increases in the acceleration of the payments. Through that, we are doing a great deal to make Ontario more competitive, but all of those things are addressed through the budget, and I think they're appropriately dealt with that way rather than through this bill.

The Vice-Chair (Mr. Vic Dhillon): Any further comment? Seeing none, all those in favour of NDP motion 15? Against? That's defeated.

Next is government motion number 16. Ms. Van Bommel.

1450

Mrs. Maria Van Bommel: I move that subsection 2(3) of the bill be amended by striking out the portion before paragraph 1 and substituting the following:

"Contents of poverty reduction strategy

"(3) Every new or modified poverty reduction strategy is to include the following:"

The Vice-Chair (Mr. Vic Dhillon): Ms. Munro?

Mrs. Julia Munro: In an earlier part, you had a similar phrase that you had brought forward as an amendment. I wanted to ask why you took out "long-term."

Mrs. Maria Van Bommel: Actually, it's an issue of clarification. There seemed to be confusion in terms of what "long-term" means. Some people's perception of "long-term" is the five-year strategy, whereas for others "long-term" means the whole issue of reduction of poverty over cumulative strategies. So rather than having the confusion about what is "short-term" or what is "long-term," we felt that by taking that word out, we would then be able to clearly say what a poverty strategy should be, whether it's a five-year strategy or even a three-year strategy. We don't necessarily want to be tied down to arguments about what's "short-term" and what's "long-term"; we just simply feel that for every subsequent government, it should be mandated that they have strategies in place. If they are able to accomplish the targets of that strategy in a shorter time frame, there should then be another subsequent strategy put in place.

Mrs. Julia Munro: If I just might ask further, where you have it now as "new or modified," is that to imply that you wouldn't be taking something that you've been doing and putting it into a new time frame?

Mrs. Maria Van Bommel: We require targets to be set. In terms of "modified," it is a situation where, if part of the target has already been accomplished, and it is the government's desire to modify the strategy based on

some of the things that have come about, as long as the targets are still accomplished over the term, that would still be the intent.

Mrs. Julia Munro: I guess my question comes to: Let us assume—since obviously all of this is hypothetical at this point in terms of developing a strategy, what if you were satisfied with the strategies that were working?

Mrs. Maria Van Bommel: Now I'm confused. Can

you give me an example?

Mrs. Julia Munro: It implies, I think, that where you have every "long-term" poverty strategy in the original, you've now changed it to "every new or modified," and all I'm asking is, does that mean you throw out things that are working by omission, by not referring to those strategies that you would wish to continue?

Mrs. Maria Van Bommel: I'm not quite clear what were—I'm sorry, Julia. I'm just trying to understand

what your concern is.

Mrs. Julia Munro: All I'm concerned about is that you are imposing the need to have "new or modified," as opposed to finding that what you have already working is working. So when you talk about a contents of poverty reduction strategy, it says, "every new or modified," so they have to be new or modified. Could you not have ones where you are just going to say, "We're going to continue doing what we've been doing"?

Mrs. Maria Van Bommel: I'm a bit confused because my thought is, when you have set a target, and if it's working and you've achieved that target, then you're in a position at that stage to develop another strategy. The bill is saying that at least every five years there has to be

a new strategy put into place.

Mrs. Julia Munro: That's my question. Thank you.

Mrs. Maria Van Bommel: Okay.

The Vice-Chair (Mr. Vic Dhillon): Any further debate? All those in favour of government motion number 16? Opposed? That's carried.

NDP motion number 17.

Mr. Michael Prue: I move that paragraph 3 of subsection 2(3) of the bill be struck out and the following substituted:

"3. Indicators to measure the success of the strategy that are linked to the determinants of poverty, including but not limited to income, education, health, housing and standard of living."

I might note that 18 is pretty much the same wording. I think we came from the same place, although I do think ours is a better motion because it reads "that are linked to the determinants of poverty" within the body. Therefore, I'm asking the government to support this. I think they're already on the same wavelength.

The Vice-Chair (Mr. Vic Dhillon): Further debate? Mrs. Maria Van Bommel: We will be supporting this motion.

The Vice-Chair (Mr. Vic Dhillon): All those in favour? That's carried.

Government motion number 18.

Mrs. Maria Van Bommel: I will be withdrawing that one. As was earlier noted, it will be redundant to 17.

The Vice-Chair (Mr. Vic Dhillon): Thank you. NDP motion number 19.

Mr. Michael Prue: Number 19, I'm given to understand, is out of order. I can read it for the record if you like, but I am content that it probably does go beyond the bounds of an opposition member to move this in that it involves the expenditure of money across a wide swath of government programs. Would you like me to read it into the record? Okay, I'll read it into the record, but I do understand its ultimate fate.

I move that section 2 of the bill be amended by adding the following subsection:

"Same

- "(4) Every poverty reduction strategy must include targets, standards, requirements or commitments to increase social transfer payments that are crucial to the reduction of poverty, including but not limited to the following:
 - "1. Indexed living wage.
 - "2. Income support.
 - "3. Non-profit public child care.
 - "4. Labour market participation programs.
 - "5. Affordable social housing.
 - "6. Targeted investments in aboriginal communities."

By way of explanation, this is our dream; this is what we want. This is why it's here, and I await its fate.

The Vice-Chair (Mr. Vic Dhillon): Thank you, Mr. Prue. I'd just like to rule on the admissibility of this amendment. It proposes to add a section that is beyond the scope of the bill that is currently before this committee, so therefore this motion is out of order.

Shall section 2, as amended, carry? All those in favour? That's carried.

Next, NDP motion number 20.

Mr. Michael Prue: I move that section 3 of the bill be struck out and the following substituted:

"Poverty reduction target

"3(1) At least every five years, either as a result of a review under section 6 or otherwise, the government of Ontario shall establish a specific target for poverty reduction which contains specific targets for each group of individuals who face heightened risks of poverty, including communities-of-colour, women, single mothers, people with disabilities, aboriginal peoples and newcomers.

"Target must represent significant and substantive

reduction in poverty

"(2) The government's specific target for poverty reduction must represent a significant and substantive reduction in poverty within the next five years."

By way of explanation, many poverty groups came forward wanting to see that the effect is cumulative so that every several years when the government comes forward, it must be added to the list. If poverty has been reduced by 20%, they want to see a further 20% or 25% added to that. That is the intent, and also to ensure that all of the groups that are affected beyond what the government's initial program for children was focused on are included. I understand that has been changed and that this may require modification if it is to pass. Notwithstanding

that, I think the important thing here is that the significant and substantive reduction in poverty has to be brought forward at least every five years by the government in power.

The Vice-Chair (Mr. Vic Dhillon): Further debate?

Mrs. Maria Van Bommel: I feel that this particular motion is overprescriptive in the sense that it wants to have specific targets for each group. Certainly the framework that the bill addresses as a whole doesn't talk about specific targets for each group, and I think what the bill is trying to do is make sure that governments, our government and successive governments, are held accountable. I think they will be, but I'm not comfortable with the idea of specific targets for specific groups.

The Vice-Chair (Mr. Vic Dhillon): Thank you. Any further debate?

Mr. Michael Prue: Yes. I am comfortable with that, because over time, there may be deviations from the norm. You may find the poverty rate of children and/or seniors or others going down, whereas the poverty rate among the disabled or aboriginals or other groups may be going up. I think it's very clear that a strategy would have to look at that and ask itself the question, why are some people living in poverty starting to become better off while others are not, and what do we have to do to change the strategy to work to the benefit of all?

That's all it's intended to do. I have no doubt it will be, like anything else, that some groups will move ahead more quickly under certain legislation than others, but I think it behooves this government, this Legislature and future governments to look at what is happening and to make the necessary modifications.

The Vice-Chair (Mr. Vic Dhillon): Ms. Van Bommel?

Mrs. Maria Van Bommel: I understand the intent of what is happening here, but, like I said, I think to say in the bill that there have to be specific targets for each group is overly prescriptive. As you have said, there may be occasions where there need to be specific targets. The bill does not preclude that from happening. It just simply—the motion as stated would require that every group have specific targets, and I think that's a little bit onerous for any government to have to work with.

The Vice-Chair (Mr. Vic Dhillon): Thank you. Any further debate? Seeing none, all those in favour? Opposed? That is lost.

Next is government motion 21.

Mrs. Maria Van Bommel: I move that section 3 of the bill be struck out and the following substituted:

"Poverty reduction target

"3. At least every five years, either as part of the development of a new poverty reduction strategy under section 6 or otherwise, the government of Ontario shall establish a specific target for poverty reduction."

The Vice-Chair (Mr. Vic Dhillon): Any debate?

Mrs. Julia Munro: Yes, I have a question. When you look at the part about a specific target for poverty reduction, are you talking about a group of people such

as we had in the conversation a moment ago or are you talking about a specific number that you are looking at, and would that specific number have anything to do with a particular group?

One of the comments that came out of the hearings was that, because of the complexity of poverty and the number of multiple causes, you can't assume that there is a one-size-fits-all. So my concern about this is that I don't know whether the specific target is numerical; I don't know whether poverty reduction is for an aggregate, going back to an earlier concern, or whether or not the target is actually a group of people. What's meant by "a specific target for poverty reduction"?

Mrs. Maria Van Bommel: I think we're going to get legal counsel to give us a hand on this one right now.

Interjection.

Mrs. Maria Van Bommel: Thank you, Julia, for the question. When we say "specific target," what we are saying is that there needs to be a target. It doesn't necessarily have to be in terms of a specific group or a reduction of a certain level. That would be within the flexibility of the government of the day to deal with, but they need to set a target, and that's what we're asking for. We're not going to be so prescriptive as to say that it has to be for a certain group, as was brought up earlier, or that it has to address a certain number, but there needs to be some specific target. It could be a combination, it could be that they want to address just a specific group, but there needs to be targets. It's not just simply a case of being able to say, "Well, we're going to reduce poverty."

The Vice-Chair (Mr. Vic Dhillon): Mr. Prue?

Mr. Michael Prue: I have a little bit of difficulty with this because the groups that make up the poverty community—and I don't know how else to delicately phrase that—vary in size. You have the large groups, the disabled and children. You have other smaller groups because of the size of them, and maybe the First Nations community—although their poverty is dire, they're smaller in numbers and far away. So when you have a poverty strategy that aims to reduce poverty, say, by 25%, it will be skewed by the size of the groups that are affected, so that some smaller groups—there may be an announcement made that poverty has been reduced by 25% without actually assisting them in the way we need to.

We are starting to become very sophisticated in terms of collecting numbers. I remember years ago that we didn't collect numbers based on race because we were afraid that they were going to be used for deleterious effect. We're starting to understand that when you collect those and manage them and look at them properly, you can find out where you can be of best assistance. I'm not suggesting for a minute that you not collect them, but I am suggesting that to simply use an umbrella and say that we have reduced poverty by 15% or 20% or 25%, whatever the number is, will not give a clear picture, and will leave pockets of places where it has not been effective, depending on the sizes of the groups. I'm merely cautioning the government that I think it's better to collect

them in a way that they can be earmarked and separated so that we can have a better understanding. After all, we are hoping, through this process, over a number of years, to get as many people out of poverty as possible.

Mrs. Maria Van Bommel: I certainly understand where both members are coming from. I think what also needs to be remembered here is that as much as someone may be tempted to want to play with the targets and that sort of thing, there's always the real fact that there is public accountability here. As Mr. Prue has said, if you decide you're going to reduce poverty by 25% in a very small population, you could certainly say that you've accomplished that goal, but I think for the public to find that acceptable might be quite another story.

The Vice-Chair (Mr. Vic Dhillon): Any further debate? All those in favour? Opposed? It's carried.

Shall section 3, as amended, carry? All those in favour? Carried.

New section 3.1, NDP motion 22. Mr. Prue.

Mr. Michael Prue: I move that the bill be amended by adding the following section:

"Involvement of government agencies, boards and commissions

"3.1 The minister shall ensure that the activities of all agencies, boards and commissions of the government of Ontario are considered and included in the design, implementation and evaluation of poverty reduction strategies."

Quite frankly, this is a reasonable thing, I think. We have many boards, commissions, and agencies that are dependent on government funding, everything from universities to schools, hospitals—the MUSH sector—and municipalities. We have myriad numbers of commissions and boards, everything from the liquor licence board to the gambling commission—we have them all. I think that if there is something they can do or something that they are expected to do, it would not take a great leap forward to include them at this time.

The Vice-Chair (Mr. Vic Dhillon): Ms. Van Bommel.

Mrs. Maria Van Bommel: I think this one would be very difficult to actually do because we've got 295 agencies that are classified by the Management Board of Cabinet. If we were to involve all of them in the design, implementation and evaluations of the strategies, I'm not sure that that would have a practical advantage at all. I think in many ways it is—well, we want to hear from our stakeholders on this more than we need to hear from agencies.

1510

Mr. Michael Prue: If I can, all it says here is that they are "considered"; it's not saying that they're part of the design. It says that they are "considered and included in the design." I think it's the government's role to include them, to look at those agencies—and you have some very capable bureaucrats here in the room, I'm sure, who know all 295—to look at what they are intended to do, to consider them and then include them in the design, the implementation and the evaluation. That's all that's being

asked here. It's not to call 295 groups in. That isn't what this says. It's merely that they be considered and that someone take it upon themselves to include them in the design so that they're not left out. You leave out 295 boards, agencies and commissions, and you leave out a good hunk of government. I think, as the minister and the Premier have said over and over, we're all in this together, and we should be.

Mrs. Maria Van Bommel: I still won't be able to support the motion.

The Vice-Chair (Mr. Vic Dhillon): All those in favour? Those against? That's lost.

We'll move to section 4, government motion number 23. Ms. Van Bommel.

Mrs. Maria Van Bommel: I move that section 4 of the bill be amended by striking out "long-term poverty reduction strategy" and substituting "poverty reduction strategy."

The Vice-Chair (Mr. Vic Dhillon): Debate? Seeing none, all those in favour? Opposed? That's carried.

NDP motion 24.

Mr. Michael Prue: I move that section 4 of the bill be amended by adding the following subsection:

"Report to be tabled

"(2) The minister shall table the annual report referred to in subsection (1) in the Legislative Assembly within 60 days after its completion or, if the assembly is not in session, at the beginning of the next session."

This is merely meant to be current and to allow that the motion and the information be brought forward at the earliest possible occasion so that all members of the Legislature can participate in the ongoing strategy.

The Vice-Chair (Mr. Vic Dhillon): Debate? Ms. Van Bommel.

Mrs. Maria Van Bommel: I understand where Mr. Prue is going with this, but I think—again, I look at the word "completion," and it doesn't really tell me when that should be. Does that mean when it's written, when it's actually printed or when it's approved internally? We need to have a clearer idea of when the report is completed, and it doesn't say in this motion when the clock starts to run for the tabling of it.

Mr. Michael Prue: I invite my learned friend to simply substitute any one of those and I will vote for it: the date it's written, the date it's submitted to the minister or the date that the minister signs off. Sixty days is fine by me on any of them. Just pick one; I'll vote for it.

Mrs. Maria Van Bommel: We have a government motion coming forward with that. I'll happily sit here and wait for that to come.

The Vice-Chair (Mr. Vic Dhillon): All those in favour? Opposed? That's lost.

PC motion number 25, Ms. Munro.

Mrs. Julia Munro: I move that section 4 of the bill be amended by adding the following subsections:

"Report to be tabled

"(2) The minister shall table the annual report referred to in subsection (1) in the Legislative Assembly within

60 days after its completion or, if the assembly is not in session, at the beginning of the next session.

"Referral to standing committee

"(3) The government House leader shall refer each annual report to a standing committee of the assembly.

"Committee to hold public hearings

"(4) The standing committee shall hold public hearings and invite written submissions with respect to each annual report referred to the committee.

"Recommendations to the assembly

"(5) The committee shall make such recommendations to the assembly concerning the poverty reduction strategy then in effect as the committee considers appropriate after consideration of the report and the oral and written submissions received by the committee."

I want to just take a moment to outline the reasons for this particular motion.

One of the things that has been stated throughout the process, and particularly from all stakeholders, is the importance of recognizing that this has to be part of a public process. This would then go beyond the process of simply reporting it after its completion, however that is defined, and in fact allow for a public response.

We all have recognized how complex the group is that we are considering in terms of poverty reduction. When I look at the government's own amendments to this bill, starting with the second one, which talked about reflecting Ontario's aspirations to be a leading jurisdiction, it seems to me that kind of accountability is inherent in having that kind of approach. Another government motion today refers to the need to amend the bill by adding, in particular, "persons who face discrimination," and the list of people who are included there.

Again, it would seem to me that the public interest in this bill and in this process deserves the kind of scrutiny that would come through a process such as the one that has been put forth.

I mentioned earlier that the government says that not all groups of people share the same level of risk. I mentioned, for instance, that one of those groups is people without a high school education. Obviously, that cuts across all boundaries of ethnicity and so forth.

I'm putting forward this motion for the public to have an opportunity to help the government to move forward, obviously taking into account the kinds of suggestions and comment that would come from the public hearings and written submissions.

So that's the purpose of this amendment, to provide that level of accountability and transparency in a public process.

The Vice-Chair (Mr. Vic Dhillon): Thank you very much. Any further debate?

Mrs. Maria Van Bommel: The motion talks about the annual report going forward to a standing committee and also to public hearings and then recommendations coming back from that. I'm not quite sure if the member is talking about an accountability piece here because if we do this on an annual basis, by the time the results were to come back we would have moved along to the next annual report.

If we're talking about accountability, I think the public certainly would hold the government of the day accountable. It could hold the minister accountable. The annual report would be available to people online. They certainly have an opportunity to make their own comments to the minister through their MPPs.

I wonder if, at some point, people would sort of wonder why we were doing this annually anyway. I think we need to make sure that people stay invested in this whole process and, doing it through this, people would probably want to go and talk directly to their MPP and the minister or through to the Premier and continue to do that and get a quicker result.

The Vice-Chair (Mr. Vic Dhillon): Ms. Munro?

Mrs. Julia Munro: Yes, if I might just respond to that. The difference is really very clear. Those are informal opportunities that people could or might wish to avail themselves. That's very different than a public accountability process. People can write to their MPPs any time they like, which they do. They can e-mail the Premier. That can be the end of the process. There is nothing in this bill that provides people with any kind of sense of involvement in the process, not as the bill stands right now. Frankly, the government has seized upon this as something that's very important to them, and I would assume that they would like some more formal public sense of feedback.

1520

Mrs. Maria Van Bommel: I'm just reminded that the bill does actually mandate that we have ongoing consultations, in particular, in terms of the development and implementation of a strategy. I think that in terms of public involvement and opportunity, that is an ongoing process that is mandated within this bill now. The whole possibility of going to standing committee and to public hearings, like I said, on an annual basis, I don't think will be as fruitful as the process that is already outlined in the bill itself.

Mrs. Julia Munro: If I might just comment, and it will be my final comment, that's not a public process. It is in the bill that they're going to consult, but there is nothing in the bill, as it stands, that would require that process to be public.

The Vice-Chair (Mr. Vic Dhillon): Any further debate? Seeing none, all those in favour of PC motion number 25? Opposed? That's lost.

Government motion number 26.

Mrs. Maria Van Bommel: I move that section 4 of the bill be amended by adding the following subsection:

"Report to be tabled

- "(2) The Minister shall, not later than March 31 of the following year,
- "(a) lay the annual report before the assembly, if the assembly is in session; or
- "(b) deposit the annual report with the Clerk of the assembly, if the assembly is not in session."

In terms of comment on that particular motion, I think we talked earlier about the need to have a specified time and date for putting an annual report forward. In looking at the comments and listening to the comments from people on the issue of an annual report, there was certainly a sense that people wanted this to be available to them and wanted it to be available to them quickly. By putting in a deadline, that means that it won't just slide from year to year. Annual reports need to be done within a certain time frame and brought forward to the assembly.

The Vice-Chair (Mr. Vic Dhillon): Mr. Prue?

Mr. Michael Prue: Just to play devil's advocate for a minute, this will take a few more weeks in committee, third reading, Lieutenant Governor's signature. When would the first report come forward? Because it's quite conceivable the first report would not come until 2010, possibly even 2011, at which time, if it's April—

Interjection.

Mr. Michael Prue: If it's April, then you're not going to see one until 2011 or 2012. So that's what I need. I don't mind that it only comes once a year. I don't care if the date is soon after March 31, but when will the first report be presented, because unless we have some guarantee that it will come forward fairly rapidly then—just please assuage my fears.

Mrs. Maria Van Bommel: I just draw your attention to section 4, annual report, "The minister shall, commencing at the end of 2009, prepare an annual report on the government's long-term poverty reduction strategy, including the government's"—

Mr. Michael Prue: So the first one we would get would be soon after March 31, 2010.

Mrs. Maria Van Bommel: Ten.

The Vice-Chair (Mr. Vic Dhillon): Any further debate? All those in favour of government motion number 26? Opposed? That's carried.

Shall section 4, as amended, carry? Carried.

Section 5, government motion number 27. Ms. Van Bommel.

Mrs. Maria Van Bommel: I move that section 5 of the bill be amended by striking out "long-term poverty reduction strategy" at the end and substituting "poverty reduction strategy".

Again, it relates to the whole issue of the definition of "long-term."

The Vice-Chair (Mr. Vic Dhillon): Any further debate? Seeing none, all those in favour? Opposed? Carried.

NDP motion number 28. Mr. Prue.

Mr. Michael Prue: I move that section 5 of the bill be amended by adding the following subsection:

"Groups to be consulted

"(2) The individuals and groups to be consulted by the minister must include members of or groups working with communities of colour, women, single mothers, people with disabilities, aboriginal peoples and newcomers."

I'm given to understand that Ms. Van Bommel will be moving amendment 28A. Since it is more inclusive, I

will support that. Again, I ask that this be held down pending approval of 28A. If it is, then I will withdraw it.

The Vice-Chair (Mr. Vic Dhillon): Okay, we'll stand that down and move on to government motion 28A. Ms. Van Bommel.

Mrs. Maria Van Bommel: I move that section 5 of the bill be amended by adding the following subsection:

"Groups to be consulted

"(2) The individuals and groups to be consulted by the minister must include representatives of people at heightened risk of poverty, including immigrants, women, single mothers, people with disabilities, aboriginal peoples and racialized groups."

The Vice-Chair (Mr. Vic Dhillon): Debate? Seeing

none, all those in favour? Opposed? Carried.

Mr. Michael Prue: I intend to either withdraw mine or have it declared redundant.

The Vice-Chair (Mr. Vic Dhillon): Motion number 28 is declared redundant.

Shall section 5, as amended, carry? Carried.

Section 5.1, NDP motion 29: Mr. Prue.

Mr. Michael Prue: I move that the bill be amended by adding the following section:

"Independent review panel

"5.1(1) Within one year after the issue of Breaking the Cycle-Ontario's Poverty Reduction Strategy, the minister shall appoint an independent review panel,

- "(a) to undertake the review of the implementation and effectiveness of the changes resulting from the execution of the poverty reduction strategies as required under section 6; and
- "(b) to advise the minister on such matters as the minister may refer to the panel relating to poverty reduction.

"Composition and selection panel

"(2) The minister shall determine the process and criteria for selection of the members of the independent panel in consultation with members of the private, public and non-profit sectors and individuals, including those living in poverty, and the minister shall ensure that the process and criteria are made public.

"Powers

"(3) The independent review panel may,

"(a) consult with, solicit opinions from, or receive or hear requests and suggestions from persons, bodies, organizations or associations with respect to any matter relating to poverty reduction;

"(b) make recommendations to the minister on any

matter relating to poverty reduction; and

"(c) give opinions to the minister on government policies that can reasonably be expected to have an impact on poverty levels in Ontario.

"Association with advisory bodies

"(4) In the exercise of its functions, the independent review panel may work in association with any advisory body whose work is related to the reduction of poverty.

"Publication of recommendations

"(5) The independent review panel shall make its recommendations and opinions referred to in subsection

(3) publicly available no later than 30 days after the recommendation or opinion is given to the minister."

By way of explanation, this is a way to try to democratize and to open up the entire process, to have a group or a single individual there to advise and review on the implementation and effectiveness of the changes. It's an opportunity to bring in the panel, to bring in and consult with opinions from other people, including people who live in poverty. It's an opportunity for the advisory bodies—that the panel may work in association with any advisory body whose work is related to the reduction of poverty and that it be published.

Quite frankly, a lot of work has been done in the last year, year and a half. Groups like 25 in 5, the Colour of Poverty, associations of First Nations groups—there's been lots of work done, and I would hate that that would suddenly stop. They have done a good job in bringing forward to the government what needs to be done. We're simply asking that the government continue to go along this line, to pick an advisory panel that will work, and to have them continue the consultations with the many, many groups—I forget what the number is; 400 or something, some huge number—that have made submissions and been part of this. If you were to just simply stop and freeze them out, I think that it wouldn't be doing as much of a service as to continue them working along this laudable goal.

1530

The Vice-Chair (Mr. Vic Dhillon): Ms. Van Bommel.

Mrs. Maria Van Bommel: We heard throughout the public hearings that there is some confusion about what is intended by the word "review." What the bill intends to do by a review is an assessment, so that we can move forward and take the strategy forward. This is really a very important part of the bill. What we need is, as Mr. Prue has said, a number of organizations, and there will be others in the future, that have a stake in making sure that the strategy will work and will get the results that they need and that we need as well. So there's been some confusion about the word "review."

What we intend here, when we say "review," is that we'll make sure that it is a review in the sense of going forward with the new strategy. When we talk about that, we certainly want to make sure that when we put forward a new strategy and the process for that, in terms of consultation about it, for setting specific targets for the future, all those would be affected by that review. But the review is intended to be on a going-forward basis.

Mr. Michael Prue: But I understand, from subsequent motions, or ones that will follow, that it's your intention that the government conduct the review, not an independent review panel. I think that's where, perhaps, we are differing. We believe that the review is essential, but like so many other boards and commissions in the province of Ontario—you have the Ombudsman, the privacy commissioner, the Integrity Commissioner, the medical officer of health, all of whom report to the Legislature and are somewhat at arm's length, and here you

have the government reviewing itself. We think this is

too important a policy not to be independent.

Mrs. Maria Van Bommel: But the review would go forward in consultation with exactly the same groups that you talked about, because we talk about the ongoing consultations. I think where we are confused is the whole intent of the review. The review is intended to move the strategy forward in the development of a new strategy. I think that's where some of the confusion goes, at this

Mr. Michael Prue: If I could play devil's advocate, what if you get a government elected that is not inter-

ested in the strategy?

Mrs. Maria Van Bommel: But the bill requires governments to develop a new strategy at least every five years. The whole point of having this bill is that there will no longer be an opportunity for a government to ignore the whole issue of poverty reduction. It becomes-

Mr. Michael Prue: But certainly the government could say-

Mrs. Maria Van Bommel: —a mandated priority for

Mr. Michael Prue: But they could reduce it to a 1% poverty reduction. They could do any number of things.

Mrs. Maria Van Bommel: I think that with public accountability, when you come forward with specify targets-and Ms. Munro talked about that same sort of thing. What we are saying here, very clearly, is that these targets-there's a certain structure to the strategy, and there is public accountability there as well, because it will now be mandated as a priority for a government. It is something that they are going to have to address. By setting forward this bill, that is exactly the intent of it.

The public will certainly hold people accountable if they try to reduce the targets in such a way that they could say, "We only did 1%." I don't think there would

be any public tolerance for that.

Mr. Michael Prue: I lived through the Harris years.

I'm telling you, there is public tolerance.

Mrs. Maria Van Bommel: I disagree with you. I guess we're going to have to disagree on that. Certainly, once it becomes mandated as a priority for government, I don't know how you would be able to say that the public would suddenly abandon the poor.

Mr. Michael Prue: See? Nor did Mr. Harris, she says. This is what I'm afraid, if you don't pass this, is going to

happen.

The Vice-Chair (Mr. Vic Dhillon): Mr. Ramal.

Mr. Khalil Ramal: I listened to your argument and also to my colleague's argument. It's important to put a lot of emphasis on it, but regardless of what kind of government is going to come in the future, it's up to them. They can change it at any time. Even though passed or being regulated, they can reverse it the way they want. So there's no-

Mr. Michael Prue: I'm just trying to make it harder.

Mr. Khalil Ramal: Look what happened, as you mentioned, in Mike Harris's time. He reversed the whole social policy.

The Vice-Chair (Mr. Vic Dhillon): Any further debate?

Mrs. Maria Van Bommel: I think it's also fair to say that in the Mike Harris days, there was no legislation like this. It was not a mandated priority of the government. I don't mean to slight Ms. Munro, but the whole intent of doing this is that it now becomes mandated for gov-

ernments to address the reduction of poverty.

Mrs. Julia Munro: There are two things I'd like to say. First of all, I don't think this is germane to the bill that we're looking at right now; and if we are going to discuss history, then I would certainly have to say that one of the things that has been used to talk about children in poverty is the breakfast program, which actually was begun in 1996, I think. The opportunity to take people off social assistance and create the ODSP just stands as simply another example of recognizing the importance for individuals who need special help and need some kind of structure. So I want to set the record straight, and I would also suggest that we need to be discussing the bill at hand.

The Vice-Chair (Mr. Vic Dhillon): Any further debate? Seeing none, all those in favour of NDP motion 29? Opposed? That's lost.

Since that was lost, NDP motion 30 is out of order because it's contingent upon the previous motion being carried. So we'll skip that.

Government motion 31. Ms. Van Bommel.

Mrs. Maria Van Bommel: I move that subsection 6(1) of the bill be struck out and the following substituted:

"Development of new poverty reduction strategy

"6(1) At least every five years, the government of Ontario shall assess the poverty reduction strategy that is in effect."

I think, again, this is an issue of clarification. We want to make sure that there is a strategy that includes targets, initiatives and indicators, and that every subsequent strategy must have these core elements.

The Vice-Chair (Mr. Vic Dhillon): Any further debate? Seeing none, all those is favour? Opposed? Carried.

NDP Motion 32. Mr. Prue.

Mr. Michael Prue: I move that section 6 of the bill be amended by adding the following subsection:

"Timetable for review

"(1.1) The review shall be conducted in accordance with the following rules:

"1. The independent review panel shall begin its review no later than four years after the issue of the poverty reduction strategy"-

The Vice-Chair (Mr. Vic Dhillon): Mr. Prue, sorry, I'm going to have to just intervene. I've been advised that this motion is out of order.

Mr. Michael Prue: In view of the passage of the previous one?

Interjection.

Mr. Michael Prue: It's been explained that with the defeat of the independent review panel, this is redundant. That's all that needed to be said. I would agree that my motion to do that was-

The Vice-Chair (Mr. Vic Dhillon): And so is motion 33.

We'll move on to NDP motion 34. Mr. Prue.

1540

Mr. Michael Prue: I move that clause 6(2)(b) of the

bill be struck out and the following substituted:

"(b) shall arrange for consultation to be carried out by such means as will facilitate participation by stakeholders, other levels of government, members of the private, public and non-profit sectors and individuals, including those living in poverty."

If I can, Mr. Chair-

The Acting Chair (Mr. Wayne Arthurs): Mr. Prue.

Mr. Michael Prue: The Chairs keep changing here. I look up and there is a new one. I don't know, I guess I'm wearing them all down.

We think this is essential for consultation by the broadest possible means. The most important one to me is the public and non-profit sectors and individuals,

including those living in poverty.

Again, I said earlier in the deliberations here today that part of the first phase did not include adequately, in my view, people living in poverty and that everything we do around this bill must include those who live in poverty because the effects of whatever we do will be felt most strongly by them. I think their opinions are valuable.

Having grown up in Regent Park, if you want to know about poverty, you should ask someone living in poverty, not someone who works with someone living in poverty, because the difference of not having the money and looking at someone who does not have the money-as much as you might be empathetic and try to deal with them—is quite striking. I think poor people have a dignity of themselves that needs to be heard.

The Acting Chair (Mr. Wayne Arthurs): Further discussion?.

Mrs. Maria Van Bommel: I absolutely agree. The value of what was presented to us here in standing committee and through the consultations that the minister did on the current poverty reduction strategy is very valuable. Certainly, those who live in poverty have the best understanding of what that life is like. It's not the same as going in and helping and then getting to go home to your own house and not having to live it every day for every year as well.

I think our next motion is going to elaborate a little bit more, a little further on the point that you're trying to make here. We feel that the minister responsible should be accountable for arranging consultations. We feel that the minister has the responsibility to ensure that it happens in a way that those who are interested—the poor themselves, those who work with the poor-are all

involved in that.

The Acting Chair (Mr. Wayne Arthurs): Further discussion? Mr. Prue.

Mr. Michael Prue: If I could, I would be content, again, if we could deal with government motion 35, to

see if that passes, and then, should it do so, I would be prepared to have mine declared redundant.

The Acting Chair (Mr. Wayne Arthurs): Is there unanimous consent to stand down item 34? Agreed? Agreed.

Then we'll move to government motion number 35.

Mrs. Maria Van Bommel: I move that subsection 6(2) of the bill be struck out and the following substituted:

"Consultation

"(2) As part of an assessment under this section, the

"(a) shall inform the public of the proposed assessment of the strategy and solicit the views of the public

with respect to the strategy; and

"(b) shall arrange for consultations to be carried out by such means as the minister believes will facilitate participation by key stakeholders, other levels of government, members of the private, public and non-profit sectors and individuals, including individuals living in poverty."

The Acting Chair (Mr. Wayne Arthurs): Ms. Van

Mrs. Maria Van Bommel: I think, certainly, that we've talked about this in previous discussions, and I would just reiterate the same thing again.

The Acting Chair (Mr. Wayne Arthurs): Further discussion? Ms. Munro.

Mrs. Julia Munro: I'd just point out that it's not necessary for it to be in the public. This is just the minister having consultations.

The Acting Chair (Mr. Wayne Arthurs): Further discussion? There being none, those in favour of government motion 35? Those opposed? The motion is carried.

We return then to motion 34—just bear with me for a moment.

Interjection.

The Acting Chair (Mr. Wayne Arthurs): I'm advised that item number 34 now becomes a redundant item and requires no further action in light of the passed item 35.

Government motion 35a, Mrs. Van Bommel?

Mrs. Maria Van Bommel: I move that section 6 of the bill be amended by adding the following subsection:

"Groups to be consulted

"(2.1) The individuals and groups to be consulted by the minister must include representatives of people at heightened risk of poverty, including immigrants, women, single mothers, people with disabilities, aboriginal peoples and racialized groups."

Again, we go to the same point that Mr. Prue was making earlier, which is that we received invaluable information from stakeholders, groups and people living in poverty as well, so we want to make sure that those groups are also involved in the consultations.

The Vice-Chair (Mr. Vic Dhillon): Any further

Mrs. Julia Munro: Yes. I just want to ask if the government would consider a friendly amendment to this, which would be "including, but not limited to".

Mrs. Maria Van Bommel: Just let me find out. Where would you like to put that, Ms. Munro?

Mrs. Julia Munro: In the middle of the line on (2.1), in the brackets, where it says, "The individuals ... to be consulted ... must include representatives of people at heightened risk of poverty," "including but not limited to".

Mrs. Maria Van Bommel: That's fine. We would consider that to be a friendly amendment.

Mrs. Julia Munro: Thank you.

Mrs. Maria Van Bommel: Thank you, Ms. Munro.

Mrs. Julia Munro: Now, do I need to move it as an amendment? No.

The Vice-Chair (Mr. Vic Dhillon): Shall the amendment to the amendment carry? It's carried.

Any further debate?

The Vice-Chair (Mr. Vic Dhillon): Shall the amendment, as amended, carry? Carried.

All those in favour of 35A, as amended? Carried.

NDP motion number 36 is out of order.

Government motion 37?

Mrs. Maria Van Bommel: I move that subsection 6(3) of the bill be struck out and the following substituted:

"New poverty reduction strategy to be issued

"(3) Based on its assessment of the poverty reduction strategy then in effect and after consideration of the written and oral representations it receives, the government shall develop and issue a new poverty reduction strategy for Ontario."

Again, this is a clarification motion.

The Vice-Chair (Mr. Vic Dhillon): Further debate? Mr. Ramal.

Mr. Khalil Ramal: No, I'm okay.

The Vice-Chair (Mr. Vic Dhillon): No? All those in favour of government motion 37? Opposed? Carried.

Shall section 6, as amended, carry? Carried.

Section 6.1, NDP motion 38. Mr. Prue.

Mr. Michael Prue: I move that the bill be amended by adding the following section:

"Disclosure to the Assembly

"6.1 On the day that a government bill receives first reading in the Legislative Assembly, the minister responsible for the bill shall make a statement in the Legislative Assembly informing the members of whether any provision in the bill can reasonably be expected, if the bill passes, to have a direct and significant impact on the income of any person or family living in poverty in Ontario."

I think we just want people to know what's going to happen to them.

The Vice-Chair (Mr. Vic Dhillon): Further debate? Mrs. Van Bommel.

Mrs. Maria Van Bommel: Thank you very much. I certainly understand the intent of the motion, but I don't think we really need to prescribe to ministers' ministerial statements. I think most ministers will deal with this in a head-on way and make their statements anyway, without the need of being told to do so by the bill.

Mr. Michael Prue: What we're trying to make sure is that the minister states at the outset whether the bill and the passage of the bill is intended to ameliorate the lot of people living in poverty and, if so, by how much.

The Vice-Chair (Mr. Vic Dhillon): Seeing no further debate, all those in favour of NDP motion 38? Opposed?

Losi

Government motion 39.

1550

Mrs. Maria Van Bommel: I move that clause 7(c) of the bill be amended by striking out "long-term poverty reduction strategy" and substituting "poverty reduction strategy".

Again, this is for clarification.

The Vice-Chair (Mr. Vic Dhillon): Further debate? Seeing none, all those in favour? Opposed? Carried.

Shall section 7, as amended, carry? Carried.

NDP motion 40.

Mr. Michael Prue: Mr. Chair, I'm given to understand that NDP motions 40 through 45 are out of order. If that is the case, I am prepared to read them into the record, but can you tell me if that's the intent?

The Vice-Chair (Mr. Vic Dhillon): It's up to you.

Mr. Michael Prue: But is it your intent to rule them all out of order?

The Vice-Chair (Mr. Vic Dhillon): Yes, they would be out of order, I'm told.

Mr. Michael Prue: I still think I should read them in, because we believe in these things. So let's go.

I move that the bill be amended by adding the following section:

"Equity and Anti-Racism Directorate

"7.1 The government of Ontario shall establish a directorate under the name Equity and Anti-Racism Directorate in English and Direction générale de l'équité et de l'antiracisme in French, to do the following:

"1. Provide for the collection and analysis of ethnoracially and otherwise appropriately disaggregated data across all provincial ministries and public institutions.

"2. Provide an ongoing monitoring and program development role for the effective implementation of comprehensive and inclusive equity and anti-racism policies and practices in order to respond to any identified inequities and disparities."

The Vice-Chair (Mr. Vic Dhillon): I would like to rule on the admissibility of this amendment, in that it proposes to add a section beyond the scope of the bill that is currently before the committee. Therefore, I rule this motion is out of order.

NDP motion 41.

Mr. Michael Prue: I move that the bill be amended by adding the following section:

"Equity in Employment Directorate

"7.2 The government of Ontario shall establish a directorate under the name Equity in Employment Directorate in English and Direction générale de l'équité en matière d'emploi in French to be fully mandated and adequately resourced in order to ensure merit-based employment across the province through the implementation

of mandatory and comprehensive employment equity

programs."

The Vice-Chair (Mr. Vic Dhillon): Again, the admissibility of this amendment—it proposes to add a section beyond the scope of the bill that is currently before the committee. Therefore, this is again out of order.

Motion 42, NDP.

Mr. Michael Prue: I move that the first paragraph of the preamble to the bill be struck out and the following substituted:

"Preamble

"Recognizing that the reduction of poverty supports the social, economic and cultural development of Ontario, the government of Ontario published on December 4, 2008, Breaking the Cycle-Ontario's Poverty Reduction Strategy, a comprehensive long-term strategy to reduce poverty. The government's poverty reduction strategy is guided by the vision of a province where every person is entitled to an equal opportunity to achieve his or her full potential and contribute to and participate in a prosperous and healthy Ontario, and builds on the foundations of Ontario's education system, the Ontario child benefit program and such other public institutions essential to the building of an equitable and healthy Ontario."

The Vice-Chair (Mr. Vic Dhillon): We're just going to have to backtrack a bit; my mistake. In dealing with

section 8, shall section 8 carry? Carried.

Shall section 9 carry?

Okay, now we'll deal with NDP motion 42 and that's out of order. I want to get this on the record. I'd like to rule on the admissibility of this amendment that proposes to amend the preamble of the bill. Second reading of a bill provides members an opportunity to hold a general debate on the principle of a bill. If a bill receives second reading in the House, then the scope of the bill is set. A substantive amendment to the preamble of a bill referred to a committee after second reading is admissible only if rendered necessary by amendments made to the bill. In my opinion, the proposed motion to amend the preamble does not reflect the amendments made to Bill 152, therefore I rule this motion out of order.

Next is NDP motion number 42A. Mr. Prue.

Mr. Michael Prue: I move that the first paragraph of the preamble to the bill be struck out and the following substituted:

"Preamble

"Recognizing that the reduction of poverty supports the social, economic and cultural development of Ontario, the government of Ontario published on December 4, 2008 Breaking the Cycle—Ontario's Poverty Reduction Strategy, a comprehensive long-term strategy to reduce poverty. The government's poverty reduction strategy is guided by the vision of a poverty-free province where every person is entitled to an equal opportunity to achieve his or her full potential and contribute to and participate in a prosperous and healthy Ontario, and builds on the foundations of Ontario's education system, the Ontario child benefit program and such other public institutions essential to the building of an equitable and healthy Ontario."

The Vice-Chair (Mr. Vic Dhillon): That is also out of order. The explanation is the same as motion number 42.

We'll move to NDP motion number 43. Mr. Prue.

Mr. Michael Prue: I don't want to be difficult, but can you tell me what has not been passed that is in this preamble, what's not been passed today?

The Vice-Chair (Mr. Vic Dhillon): Counsel will

explain.

Ms. Catherine Macnaughton: The rule on amending preambles after second reading is that you can't do it at all unless there has been such an amendment made to the act that you have to amend the preamble or it would be out of whack with the amended act. So it's not that there's anything in your preamble that conflicts with the act, it's that you can't amend the preamble unless it's absolutely necessary. It's the same rule as for changing long titles: You can't change the long title unless you've done something in the act that would require that you have to because it doesn't line up with the bill.

Mr. Michael Prue: All right, so it is literally impossible to move these motions, save and except had we changed the act in such a huge way—that's the only chance. Otherwise never, ever attempt to change a pre-

amble.

Ms. Catherine Macnaughton: That's the rule. And don't try to add a preamble after second reading. After first reading, you have more latitude because the scope of the bill has not been voted on. So if the minister had referred the bill to committee after first reading, it's much wider for what you can do.

Mr. Michael Prue: Thank you.

The Vice-Chair (Mr. Vic Dhillon): Motion 43, Mr. Prue.

Mr. Michael Prue: It's going to be exactly the same, because now, given the explanation, 43, 44 and 45 would all fall under that, although I still think that they would be good additions.

The Vice-Chair (Mr. Vic Dhillon): So would you

like to withdraw 43, 44—

Mr. Michael Prue: No, I think it's just as fast for me to read them in and have you rule on them.

I move that the second paragraph of the preamble to the bill be struck out and the following substituted:

"A principal goal of the government's strategy published on December 4, 2008 is to achieve a 25% reduction in the number of Ontario children living in poverty within five years and a 50% reduction in the number of Ontario children living in poverty within 10 years."

The Vice-Chair (Mr. Vic Dhillon): For the same reasons, this is out of order.

Mr. Michael Prue: Okav.

The Vice-Chair (Mr. Vic Dhillon): NDP motion 44.

Mr. Michael Prue: I move that the third paragraph of the preamble to the bill be struck out and the following substituted:

"The initial focus of the government's strategy is on breaking cycles of poverty by improving economic, learning and developmental opportunities for children and families across Ontario. "A continuing objective of the government strategy is to reduce levels and depths of poverty for all adults across Ontario."

The Vice-Chair (Mr. Vic Dhillon): That's out of order as well, for the same reasons.

Mr. Michael Prue: And 45 I would withdraw in favour of 45A. It's just a slight wording change.

Interjection.

Mr. Michael Prue: I'm moving 45A. So I'll withdraw 45 in favour of 45A, which reads as follows:

I move that clauses (b) and (c) of the last paragraph of the preamble to the bill be struck out and the following substituted:

"(b) to measuring the success of the strategy by setting a target at least every five years and assessing indicators of poverty reduction based on disaggregated data collected on the basis of race, gender, disability, aboriginal status, family status, immigration status and on such other basis as is reflective of the disproportionate levels of poverty experienced by different groups in Ontario; and

"(c) to reporting annually on the success of the strategy broken out on a constituency and community disaggregated basis as described in clause (a)."

The Vice-Chair (Mr. Vic Dhillon): It's out of order, based on the same reasons.

Shall the preamble carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 152, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

Thank you very much, committee members. Ms. Van Bommel.

Mrs. Maria Van Bommel: Just before we adjourn, I'd like to thank all my colleagues on the standing committee for their thoughtful input. I think we all genuinely worked to make sure that this bill was the best it possibly could be. I'd also like to thank the staff of the standing committee for their involvement and Hansard.

I'd like to thank Tatum Wilson and Kevin Spafford of the ministry, policy advisers to Minister Matthews, for their work on the whole poverty reduction; Doug Ewart and Muriel Deschênes, legal counsel, for their involvement as well and their advice; and my own EA, James Berry, who has helped me to carry this as the PA. Thank you very much.

The Vice-Chair (Mr. Vic Dhillon): Thank you. This committee is adjourned.

The committee adjourned at 1559.



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STANDING COMMITTEE ON SOCIAL POLICY

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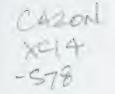
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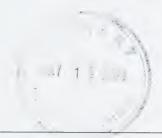
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Official Report of Debates (Hansard)

Monday 4 May 2009

Standing Committee on Social Policy

Education Amendment Act (Keeping Our Kids Safe at School), 2009

Assemblée législative de l'Ontario

Première session, 39^e législature

Journal des débats (Hansard)

Lundi 4 mai 2009

Comité permanent de la politique sociale

Loi de 2009 modifiant la Loi sur l'éducation (sécurité de nos enfants à l'école)

Chair: Shafiq Qaadri Clerk: Katch Koch Président : Shafiq Qaadri Greffier : Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Monday 4 May 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Lundi 4 mai 2009

The committee met at 1415 in room 151.

EDUCATION AMENDMENT ACT (KEEPING OUR KIDS SAFE AT SCHOOL), 2009

LOI DE 2009 MODIFIANT LA LOI SUR L'ÉDUCATION (SÉCURITÉ DE NOS ENFANTS À L'ÉCOLE)

Consideration of Bill 157, An Act to amend the Education Act / Projet de loi 157, Loi modifiant la Loi sur l'éducation.

TORONTO POLICE SERVICE

The Chair (Mr. Shafiq Qaadri): Mr. Decker, welcome to the social policy committee. Please begin now.

Mr. Thomas Decker: Thank you. Good afternoon. My name is Thomas Decker. I'm a police constable employed with the Toronto Police Service, and I'm currently assigned to the community mobilization unit serving the lesbian/gay/bisexual/transgender community as their liaison officer.

I am speaking today in my capacity as LGBT liaison officer, and I would like that acronym to be understood comprehensively: encompassing lesbian, gay, bisexual, transgender, transsexual, intersex, queer, questioning, two-spirited and allies. My primary focus is on LGBT youth, and on homophobic, biphobic and transphobic bullying—henceforth called homophobic bullying—and violence. However, many of the comments I'm going to make today are hate-crime-generic; that is, they are applicable to hate- or bias-motivated acts against any of the identifiable groups mentioned in the Ontario Human Rights Code.

My comments today will focus on three areas: first, mandatory intervention, section 300.4 of the bill; second, mandatory reporting, section 300.2 of the bill; and mandatory parent or guardian notification and exception, section 300.3 of the bill.

I would just like to give you a brief history of the Toronto Police Service's involvement in this area. The Toronto Police Service provides policing services in one of the most diverse and multicultural cities in the world. Its area of jurisdiction is also home to one of the largest populations of members of the LGBT community in

North America. The service is the largest municipal law enforcement agency in Canada. Although the city of Toronto is considered one of the most diverse cities in the world, there is still crime motivated by hate or bias which affects a number of communities.

One of the communities that is very much at the receiving end of hate and bias is the LGBT community, and unfortunately, it is especially youth who are affected by this hatred, both as victims and perpetrators. Our service has recognized this reality and continues to make it a priority to deliver policing services to our most vulnerable groups.

In your package, you will find a paper on the history of the Toronto Police Service's involvement in efforts to reduce homophobic violence and bullying. Information about a program called RHVP—Report Homophobic Violence, Period—which has been adopted by a number of policing agencies in the province of Ontario and which consists of a public service announcement and sample lesson plans developed under the guidance of Professor Gerald Walton of the faculty of education at Lakehead University in Thunder Bay, and a suicide prevention guide developed by Rosemary Hardwick, an LGBT youth suicide prevention specialist with CAMH.

Research conducted in Canada as well as internationally and corroborated by the Toronto Police Service's annual hate and bias crime statistical report, published since 1993, showed the following trends:

The LGBT community traditionally ranks third among victim groups.

Half of the victims of hate crimes in Canada are between the ages of 12 and 24.

Two thirds of all persons accused of the commission of a hate crime in Canada are between the ages of 12 and 24.

Educational facilities rank second among hate crime offence locations.

A disproportionately high percentage of hate crimes committed against members of the LGBT community were violent in nature—crimes against the person.

Hate and bias victimization is severely underreported.

All those findings have been put forward in the safe schools action team report, as well as most recently in Egale Canada's first national school survey.

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First, mandatory intervention: Mandatory intervention can be seen as a means of crime prevention. The concept of crime prevention has become much broader and more extensive in its meaning. It has come to encompass the work of agencies which until recently had not seen crime as a legitimate concern of theirs. School administrators today more than ever are called to assist in crime prevention. Crime prevention traditionally employs a number of key strategies. Some of those are targeting key sites of violence—if hate crime is very much a youth phenomenon, we need to go into schools; early prevention and intervention—this is exactly what this section of the bill is calling for; improved service delivery; and victim support.

Section 300.4 of the bill can be seen as applying these crime prevention principles in the context of Ontario's schools. The safe schools action team in its report perfectly summarized and applied these principles to the school context in one short but very valuable sentence: "Behaviour that is not addressed becomes accepted behaviour"—page 9 of said report.

Mandatory reporting: Victims of hate- or bias-motivated actions are often reluctant to report their victimization for a number of reasons. LGBT youth are exceptionally vulnerable as they may not have fully come to terms with their sexual orientation, or they may not have come out to their parents and friends; and by "coming out" I mean having disclosed their sexual orientation. A sad reality is that if left to their own devices and subjected to constant bullying and harassment, their last resort often is suicide. LGBT youth are seven times more likely to have attempted suicide than straight youth. One—a single one—of those suicides in the province of Ontario is one too many.

However, it is also important to note that homophobic bullying affects to a very large degree straight youth. As such, it must be considered a highly destabilizing factor for the entire school climate. This provision takes away some of the burden placed on victims and ensures that all efforts are taken in order to stop the offending behaviour and support the victim. This provision may assist in breaking the cycle of escalating violence and may be one of the most effective suicide prevention tools.

Once reported to the principal, the various school protocols in effect in the province of Ontario govern the investigation of offending behaviour. These protocols have proven to work effectively in reducing violence in Ontario's schools. Laws are only as good as their implementation. Mandatory reporting and measures to correct offending behaviour will ensure that this bill has the desired effect.

Finally, mandatory parent or guardian notification: Parent or guardian notification is essential. However, the bill recognizes that notification has to serve the best interests of the pupil. Notification must not increase the victimization the pupil already experiences. LGBT youth are especially vulnerable in this regard. They may not have come out to their parents or guardian. They are often afraid that by doing so, they might lose their parents' love and affection. Principals, maybe assisted by community school liaison officers or school resource

officers, must conduct a thorough investigation into the offending behaviour and the victim's needs and concerns. The safe schools action team recognized the need to collaborate with local community service providers, police agencies and other branches of government in order to ensure the safety and the best interests of a pupil who experiences bullying or violence. The safety of our youth is best served by a whole-of-government and a whole-of-community approach. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Decker. We have about two or three minutes per side,

beginning with the PC caucus. Ms. Savoline.

Mrs. Joyce Savoline: Thank you for being here today. I'm aware of the issues that you speak of. As chairman of Halton region, we were very active with our health department, the police services board and other organizations in the region to safeguard against incidents in Halton, so we're both on the same page on that one.

However, I think we're having a difference of opinion on what exactly is mandatory intervention. What do you mean when you use the words "mandatory intervention"? Does that mean a definite reporting, and if the reporting

doesn't happen, there are consequences?

Mr. Thomas Decker: What I mean by "mandatory intervention," and what I believe the bill, as written, now means—let's take, for an example, verbal harassment, verbal bullying, which is already against the code of conduct as decreed by the Ministry of Education, pursuant to section 13 of the Education Act—

Mrs. Joyce Savoline: I'm more meaning sexual abuse.

Mr. Thomas Decker: Well, that can very well be the case. If, for instance, an LGBT youth were sexually abused, there needs to be some form of intervention. A staff employee of the board cannot turn a blind eye to a heterosexist pinching of a girl, for instance, and say, "Well, boys will be boys." That is simply unacceptable.

Mrs. Joyce Savoline: So you believe there should be a consequence to not reporting—

Mr. Thomas Decker: Yes.

Mrs. Joyce Savoline: But this bill doesn't speak to that. Are you aware of that?

Mr. Thomas Decker: Then I may—

The Chair (Mr. Shafiq Qaadri): I need to intervene there, with respect. Mr. Marchese.

Mr. Rosario Marchese: Thank you, Thomas. A quick question that I want to ask as many people as I can: The Toronto District School Board's community safety advisory panel, chaired by Julian Falconer, also recommended the creation of a provincial school safety and equity officer to be a central repository for the reporting of serious issues of school safety. The government has never spoken about that particular recommendation, but Mr. Falconer said that this is one of the most important things that he felt should be done. Do you have an opinion on that?

Mr. Thomas Decker: I would second that, yes. I would think it would be a very good idea.

Mr. Rosario Marchese: Thank you, Thomas.

The Chair (Mr. Shafiq Qaadri): To the government side, Ms. Sandals.

Mrs. Liz Sandals: Thank you, Mr. Decker. I wonder if you could go back and finish what you were going to say about intervention, because I think it's important to understand how you would see intervention being helpful to LGBT kids.

Mr. Thomas Decker: I would like to see an onus placed on the teacher, on any staff member of a school board, if that person witnesses or receives knowledge that offending behaviour occurred, especially in the context of homophobic, transphobic, biphobic bullying, that this cannot be ignored anymore. It must be addressed either by addressing it on scene with that particular pupil who is offending or in a classroom context, and it needs to be reported to the principal so that education can take place to stop this behaviour before it reaches the level of criminality, before it reaches the criminal threshold.

Mrs. Liz Sandals: So you're not suggesting that everything negative that happens in a school would automatically be reported to the police. What you're saying is that the staff in the school need to intervene with homophobic comments, with sexist comments, with pinching and that sort of stuff, that the school needs to take responsibility for intervening, not necessarily that that means that the police are going to get called, until we escalate to those things that are on the school board police protocol.

Mr. Thomas Decker: No, certainly not. I think the school board police protocols, as they stand now, are very effective. We don't need to be in there all the time, but it may be good—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals, and thanks to you, Mr. Decker, for your deputation and written submission on behalf of the Toronto Police Service.

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SUBCOMMITTEE REPORT

The Chair (Mr. Shafiq Qaadri): We have a sub-committee report and a motion to be entered, but in the meantime, I'd invite Mr. Doug Morrell, president-elect of the Ontario Principals' Council, and colleagues to please be seated and also be on standby.

Ms. Sandals.

Mrs. Liz Sandals: So you would like me to start by— The Chair (Mr. Shafiq Qaadri): The subcommittee report, Ms. Sandals, please.

Mrs. Liz Sandals: Your subcommittee on committee business met on Thursday, April 23, 2009, to consider the method of proceeding on Bill 157, An Act to amend the Education Act, and recommends the following:

- (1) That the committee meet for purpose of holding public hearings on Monday, May 4, 2009, in Toronto.
- (2) That the clerk of the committee, with the authority of the Chair, place an advertisement for one day about public hearings in major newspapers.

- (3) That the clerk of the committee post information regarding the hearings on the Ontario parliamentary channel and the Legislative Assembly website.
- (4) That interested people who wish to be considered to make an oral presentation on Bill 157 should contact the clerk of the committee by Thursday, April 30, 2009, at noon.
- (5) That the clerk of the committee provide a list of all interested presenters to the subcommittee following the deadline for requests.
- (6) That the length of presentations for witnesses be 15 minutes for groups and 10 minutes for individuals.
- (7) That the deadline for written submissions be Wednesday, May 6, 2009, at 5 p.m.
- (8) That the deadline for filing amendments to the bill with the clerk of the committee be Thursday, May 7, 2009, at 5 p.m.
- (9) That clause-by-clause consideration of the bill be scheduled for Tuesday, May 12, 2009.
- (10) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the adoption of the report of the subcommittee, to commence making any preliminary arrangements to facilitate the committee's proceedings.

The Chair (Mr. Shafiq Qaadri): Thank you. Are there any further comments or questions before we adopt that subcommittee report? I'll take it as adopted.

Ms. Sandals, your motion please.

Mrs. Liz Sandals: I move that the Standing Committee on Social Policy receives evidence in closed session, with no audio record or Hansard transcript produced, for the witnesses appearing—or scheduled to appear, may I say—this afternoon at 1:50 p.m., 3 p.m. and 4:20 p.m. in order to provide protection to the witnesses.

The Chair (Mr. Shafiq Qaadri): Thank you. Any further comments before we adopt that motion? Motion adopted.

ONTARIO PRINCIPALS' COUNCIL

The Chair (Mr. Shafiq Qaadri): I'd now invite you, Mr. Morrell, and your colleagues of the Ontario's Principals' Council. Please do introduce yourselves individually for the purposes of Hansard recording. Your 15 minutes begins now.

Mr. Doug Morrell: Thank you, and good afternoon. My name is Doug Morrell, and I'm principal of a secondary school in Shelburne in the Upper Grand District School Board. With me today are Vicki Shannon, an elementary principal from Thunder Bay, and Naeem Siddiq, a secondary principal from Toronto. In addition to our day jobs, we are all members of the provincial executive of the Ontario Principals' Council, the OPC.

Thanks to the members of the Standing Committee on Social Policy for the opportunity to comment on Bill 157. In light of our limited time here today, we have prepared a more detailed submission that outlines our main concerns. We will leave that with all members of the committee,

but we'll take this time to highlight our recommendations.

The Ontario Principals' Council is the professional association representing principals and vice-principals in Ontario's publicly funded school system. Although membership is voluntary, we currently represent over 5,000, or about 98%, of the practising school leaders in both elementary and secondary public schools across the province.

Principals and vice-principals support the concept of mandatory reporting and intervention, the two key elements of this bill. Although we know that some MPPs have concerns with aspects of the bill, we are pleased that all parties are in general agreement with the intent, purpose and need for the legislation. But we do have some suggested changes.

First, it is imperative that the bill be amended to mandate that all staff be required to intervene in circumstances where student behaviour is likely to have a negative impact on school climate, rather than leaving this to policy.

The bill also needs to require that all staff in schools must be responsible for such interventions at all times during the school day. This would apply whether the staff member is teaching, on a scheduled break or on a prep period in any area of the school.

Resources must be provided to schools to ensure a sufficient adult presence in the hallways and on the schoolyard, particularly during breaks and transition time.

The legislation should clearly define the term "intervention" and should include the responsibility to address the situation in the moment and discipline in the moment.

Our fifth recommendation: In addition to being required to intervene, all staff members should be individually responsible for reporting serious incidents directly to the principal as soon as possible.

We know that there has been much discussion during the debate on this bill around the issue of reporting to parents. While we acknowledge there may have been incidents in which parents were not notified about an incident involving their child, those incidents are, according to our research, very rare. While we don't condone incidences in which policies are not followed, we also do not support the assumption that this is occurring on a regular basis. Both the minister and the parliamentary assistant have described situations in which such a report may bring more harm to the student.

Principals must use their professional judgment, experience and knowledge of a student's home life when making a determination about whether or not a report should be made. We support the intent and language around this as it is presently drafted. Principals must have the discretion to decide if and when to make a report to a parent.

To address concerns expressed by some legislators, the bill could be amended so that principals would need to consult with others, such as supervising officers, guidance counsellors, teachers, children's aid worker or health services agency before deciding not to notify parents. This decision would be based on the safety and best interests of the student.

We are concerned that there is no definition of "harm" in the bill. We believe that such a definition should include both physical injuries requiring medical attention by a medical professional and any injury that has a severe and/or significant emotional impact, such as bullying.

We continue to urge the government to fund more trained adults for schools who can provide the necessary teachable moments to prevent and deter inappropriate behaviour instead of simply focusing on responding to such incidents.

Everyone in the school has an overriding responsibility to create a safe environment for all students at all times of the day. Prevention and intervention are necessary components to any safe school plan and must be given priority.

Once again, we thank you for the opportunity to comment on this aspect of the safe schools action team report. We look forward to the opportunity to take part in any further consultations as you proceed with other recommendations made by the team.

The Chair (Mr. Shafiq Qaadri): Thank you. We have about three minutes per side, beginning with Mr. Marchese.

Mr. Rosario Marchese: Thank you for coming and thank you for the report. I have a few quick concerns about the bill: My criticism of the bill is that mandatory reporting is one component of the problem, but it doesn't deal with the problems that come into the school for which you get very little support. So if you've got children who were sexually abused at home or they were in an environment where there was substance abuse alcohol or drug-or where there's mental illness or where there are any sorts of problems, including fetal alcohol syndrome, which most teachers and principals and even doctors don't know how to deal with because they can't identify the problem, if you don't get the support you need, how do you then deal with the problem" That is my point. Do you want to comment on that, any one of you, all of you, some of you?

Mr. Naeem Siddiq: Of course we'd like to have more supports, more resources available. Why we support the intent of this bill is that in any of those situations something still needs to happen, and we want to be part of that process of delivering help to those students. What you're speaking to is one of the reasons why we think we need some discretion around notification, because there are some complicated issues sometimes, and we need to be helping everyone understand what's best for the student in that case. That being said, we would love more resources but we still think we have a responsibility to do something.

Mr. Rosario Marchese: Of course. With respect to reporting, I think you should have the discretion. But what if there's a serious issue that happens to a student and the principal doesn't deal with it or procrastinates or delays it for months and months? What do you think should happen in those cases?

Ms. Vicki Shannon: I think certainly there are responsibilities within every job. There are policies to be followed and board mandates, and a decision made not to report, as we're stating it in this amendment that we're bringing forward, is looking at the fact that we would be in consultation with our supervisory officers, with other agencies, with the people that we would need to, before a decision not to report to parents would be made. So in that instance, I think that would need to be followed up at a different level, because that would be the exception to the rule. I think most people dealing with conflict to the extent we're seeing it these days are very, very clear on the fact that if intervention is going to take place and if things are going to change, reporting needs to be done somehow, some way. We are simply looking at the safety of kids and want to make sure that that is the foremost consideration we have.

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Mr. Rosario Marchese: Reporting was happening in the past, was it not? Does this bill do anything different for you?

Mr. Naeem Siddiq: One of the things that we hope the bill will do is help share that duty and that sense of duty that—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. To Ms. Sandals.

Mr. Rosario Marchese: He's brutal. Mrs. Liz Sandals: Yes. Thank you.

Ms. Vicki Shannon: I'd like to have him teaching in my school.

Mrs. Liz Sandals: I have two questions. First of all, with respect to your recommendation number 7 around notification, what you're saying here, in essence, is that you would not be averse for there to be a duty to consult with a supervisory officer or children's aid worker or some sort of similar person who could bring some value-added to the decision.

Mr. Doug Morrell: We definitely think that if a report is not going to be filed, then we need to consult with other individuals to at least make sure the wheels are set in motion to assist the student.

Mrs. Liz Sandals: Okay. You then get into a discussion of harm. I presume that is because the section contemplates further harm to the student being the reason that you wouldn't report. The definition that you're suggesting is a mainly physical harm sort of definition. I think you were here when Sergeant Decker was testifying. He was suggesting the sort of thing where the student has been the subject of homophobic bullying and has said, "But I'm not out to my parents, so I don't really want you discussing it with them," which doesn't come under physical harm, most likely. Are you saying it should only be physical harm, or are you looking for something that would be a broader definition of "risk of harm"?

Mr. Naeem Siddiq: We would support what the previous speaker said, and think it has to be broader. For myself, one of the common things I deal with is helping female students with issues that they're afraid to talk to

me about, and afraid how that goes home. I've suspended young men for saying things inappropriately to a student in the hallway and then had the young lady say, "Don't tell my parents I even talk to boys." Then they've described what would happen if I did.

I think the last speaker did a very good job of explaining that the harm can be more than just physical, and it's our job to be very careful about the action we set in place and how it affects the lives of our students.

Mrs. Liz Sandals: So we shouldn't read your recommendation 8 as being the only things that we would need to capture in a reg or a policy guideline or whatever, to give you direction?

Mr. Doug Morrell: Not just physical, but social and emotional, definitely.

Mrs. Liz Sandals: Okay, thank you. That's very helpful.

The Chair (Mr. Shafiq Qaadri): Ms. Savoline.

Mrs. Joyce Savoline: First of all, I want to thank you for the job you do every day. My kids have been through the public system and they're thriving, and a lot of it is due to the kind of work that you do. I really admire what you do, and I value what you do.

Mr. Doug Morrell: Thank you.

Mrs. Joyce Savoline: But we don't live in a perfect world, so in any job you find inconsistencies. I think what I'm trying to do, through this bill, is nail down those things that fall between the cracks, and I don't find that this bill covers it. I need to understand: In sexual abuse, repeated sexual abuse, student to student, within a school, if it is the discretion of the principal, the teacher, whoever, not to report it further to the police, to the parents, is there a consequence to that? Are there consequences? Have things happened to principals who have not reported that?

Ms. Vicki Shannon: I'd have to say that those are the types of issues that we want help with and we're interested in having consultation with. The fear for us is simply extending it before we're ready with the proper information.

I dealt with a series of six girls who were involved with a young man as early adolescents—who were doing some experimenting, so to speak—and had to call the parents of those girls. Two of the responses blamed the girls for the behaviour of the boy, so that became a bit problematic in the sense that now you're wondering, what's happening in that house.

What we do is we look for help, so certainly the police were consulted. You would bring in the agencies that give you the support. Now, if someone weren't doing that, I think that's a performance issue that would belong someplace else.

I'd have to say, though, that with all of the colleagues I work with, and certainly the teachers, we have a great team. We are looking for help. These are tough decisions. They're not ones that we enter into lightly.

The Chair (Mr. Shafiq Qaadri): Mr. Shurman.

Mr. Peter Shurman: I have a question. I'm finding it hard to believe I'm listening to principals. Teachers and principals, in my experience, generally do not like being

surrogate parents. This bill, if it were written correctly, in my view, would take that burden off you. Wouldn't you want to have this immense burden taken away from you and put in the hands of the proper authorities, being parents?

Mr. Naeem Siddiq: I would suggest that we are quite comfortable with the role of parenting. I would suggest that the Education Act even asks us to do that. What we're asking for is basically more parents in the building, more people thinking that way. What we're asking for is help, not to turn our backs on the kids who are in crisis, but more agencies, more people coming into the building to do that.

I'm not sure about your experience of people who don't want that role. Maybe what they're really doing is saying they're frustrated in doing that role alone.

Mr. Peter Shurman: No. What I'm saying is that parents tend to like maintaining the role of parent, and teachers, in my experience—and you're principals, so you're teachers—tend to like not having to take on that role when they don't have to. In this particular case, mandatory reporting stops at a particular level—to wit, you—and you could pass it on—

The Chair (Mr. Shafiq Qaadri): I need to intervene there, Mr. Shurman. Thanks to you, Mr. Siddiq, Ms. Shannon and Mr. Morrell, for your presentation on behalf

of the Ontario Principals' Council.

ELEMENTARY TEACHERS' FEDERATION OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenters to please come forward: Mr. Clegg, Ms. Rettig and Ms. McCaffrey, of the Elementary Teachers' Federation of Ontario. You've seen the protocol. Our clerk will be pleased to distribute that. Please be seated and introduce yourselves for the purpose of Hansard recording, and I would invite you to please begin now.

Mr. David Clegg: Thank you, Mr. Chair. To my left is seated Marilies Rettig, our deputy general secretary, and to my right is Vivian McCaffrey, executive assistant. My name is David Clegg. I'm president of the Elementary Teachers' Federation of Ontario. We appreciate this opportunity to participate in the hearings on Bill 157 on behalf of our 73,000 members.

The current government has introduced a number of initiatives aimed at making Ontario schools safer and more inclusive places to learn and work. ETFO supported the move towards a more progressive discipline approach introduced through Bill 212 in 2007. We were particularly pleased that bullying was identified as a possible ground for student suspension.

We also welcome the safe schools action team's December 2008 report on gender-based violence, homophobia, sexual harassment and inappropriate sexual behaviour, as well as the equity and inclusive education strategy released a few weeks ago.

As the Minister of Education acknowledged when introducing Bill 157, much of the legislation simply

formalizes common practices. Teachers, as part of their daily classroom responsibilities, address antisocial behaviour and, when necessary, report serious behaviour to the school principal. Rather than a cure for a systemic problem, the bill is a response to incidents that recently received high-profile attention in both the media and the Ontario Legislature.

ETFO supports the bill's general thrust. It makes sense to have a clear protocol to report serious incidents that occur at school. It's important for parents and guardians to be notified in a timely fashion of such incidents except in situations where so doing would put the student at risk of harm. There should be clear expectations that adults in the school intervene when they witness inappropriate behaviour that negatively affects the school climate.

Although ETFO supports the general intent of the bill, this submission raises a number of concerns and identifies issues that should be addressed once the Ministry of Education turns its attention to developing the various regulations, policies and guidelines for which the bill creates ministerial authority.

Section 300.1 adds a new section to the Education Act that gives the principal the authority to delegate his or her powers and duties to either the school vice-principal or a teacher on staff. The delegation power in the bill is not clearly defined and raises a number of concerns.

Bill 81, the Safe Schools Act, introduced by the former Conservative government in 2000, gave teachers the authority to suspend a student for up to a day. ETFO cautioned its members not to exercise that authority, but to defer decisions regarding student suspensions to the principal or vice-principal. Bill 212, the 2007 legislation, acknowledged our concern related to this provision and repealed it.

Section 300.1 of Bill 157 appears to return us to the situation where teachers could be asked to make decisions about student suspensions. The federation does not support this.

Further, there should be clear limitations applied to protect teachers' liability. Specifically, a teacher delegated under this provision should not be expected to replace the principal in terms of making decisions about student suspensions or reporting to the police.

When serious incidents occur in a school during a period when a teacher has been designated as the teacher in charge, that teacher should only be expected to intervene to end inappropriate student behaviour and ensure a safe school environment and, if necessary, to move the offending student to the principal's office. It should be the responsibility of the principal to follow up regarding appropriate student discipline, documentation and reporting regarding the incident. Downloading such authority to teachers could lead to inconsistent decisions related to suspensions at the school level and also leave teachers vulnerable to unfair liability and involvement in litigation for their decisions. Authority for making such determinations properly lies with school administrators.

Currently, there are occasions when teachers are asked to stand in for absent principals, to be the teacher in

charge. Under our members' collective agreement provisions, this temporary designation is voluntary. Bill 157, or the regulations drafted to support its provisions, should clearly indicate that teachers may only be delegated authority under section 300.1 on a voluntary basis and that such delegation not conflict with the provisions of the teachers' collective agreement.

The attendant regulations, policies and guidelines need to address when the principal's delegation of authority to a teacher may occur, how teachers who undertake these obligations will be protected, what training will be provided, and whether teachers accepting this delegation will be provided with legal counsel or other supports during the exercise of these powers and any appeals or lawsuits flowing from the exercise of such powers.

Reporting to the principal: Subsection 300.2(1) of Bill 157 requires school board employees who become aware of a student activity that is subject to suspension or expulsion to report that activity to the principal. The subsection further states that an employee doesn't have to make the report if the employee understands that the report has been made by someone else or if his or her report wouldn't provide additional useful information. This section potentially leaves school employees vulnerable in terms of verifying that they have fulfilled their legal obligation to report.

If the bill is passed, the federation will be advising members to provide reports in writing to their principals and to request a signoff of that report. School employees could also be left open to the charge that they should have reported what they believed to be redundant information. In situations where a group of employees witness a serious incident, there should be a clear process in place to avoid situations where members of the group erroneously assume that one of them has made a report and leave themselves vulnerable to the charge that they failed to report.

Review of the reporting policies and procedures: Much of the bill is devoted to creating ministerial authority to establish policies and guidelines related to violent incidents on the part of students. Until these elements are identified, it is impossible to fully assess the potential implications and full impact of the legislation. Drafting the policies and guidelines associated with Bill 157 should not be done outside of a holistic review of all existing policies and guidelines related to reporting violent incidents.

Bill 157 does not change existing policies regarding mandatory reporting to police and documentation of serious incidents. The Ministry of Education needs to develop standard policies and procedures for the documentation of all violent incidents, not just those that are subject to suspension and expulsion.

For a number of years, ETFO has raised concerns related to the administration of the ministry guideline governing the Ontario student record, the OSR, which has been in place since 1994. It needs to be part of an overall review of guidelines and policies. The OSR should be regarded as a key tool in ensuring a safe school

climate. A teacher needs to be fully informed regarding previous serious anti-social behaviour on the part of a student who enters his or her classroom for the first time. There have been situations where violent incidents have been reported to the police but have not resulted in suspensions and were not recorded in the OSR. Since considerable discretion is given to boards and principals regarding the interpretation of the OSR guidelines, there is a lack of consistency across the province regarding what is documented.

ETFO believes that all forms of student-to-student violence and student-to-teacher violence should be documented and placed in the student's OSR through the use of a violent incident form. These forms should describe the incident, state the resolution or remedial measures taken with the student, and indicate whether the police or other agencies were involved and whether further education or action is necessary. This type of documentation will also provide teachers with the necessary knowledge and ability to monitor a student's progress and prepare an individual program designed to ensure the student's future success.

Workplace violence and harassment bill: The Ministry of Labour introduced Bill 168, the Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace), on April 20, 2009. The bill proposes to require employers to provide employees with information, including personal information, related to a risk of violence if that employee is likely to encounter that person in the course of his or her work. This section would appear to address our concerns about documentation of serious incidents on a student's OSR. Given the provisions of the Ministry of Labour bill, there is clearly a need for the Ministry of Education to incorporate the policies of Bill 168, if passed, when drafting regulations, policies and guidelines related to Bill 157.

Since Bill 157 will be codifying school employees' responsibilities regarding reporting and intervening with respect to serious student behaviour, it exposes these employees to new risks of reprisal, discipline and legal action. In order to protect school employees from increased liability, the government has a responsibility to provide the funding and training to ensure that employees are well informed about their new legal responsibilities and the procedures they are expected to follow.

Since Bill 157 is not slated to take effect until February 1, 2010, there should be an opportunity for the Ministry of Education to undertake a full review, in consultation with education stakeholders, of all policies, guidelines and regulations related to reporting and documenting incidents of student violence. Such consultation is fundamental to ensuring that the concerns identified in this submission, as well as those by other employee organizations, are effectively reviewed and addressed.

In conclusion, I would draw your attention to the five recommendations at the end of our submission. If there's time, I'd be happy to take any questions.

The Chair (Mr. Shafiq Qaadri): Thank you. We do have 90 seconds per side. Ms. Sandals.

Mrs. Liz Sandals: Thank you for recognizing that there's still a lot of work to be done in terms of policies, procedures and guidelines. I'm sure we'll be talking to all of you during that process.

I'm interested in your comments around some sort of standard form to record violent incidents. It has often occurred to me that it would make this whole area a lot easier if perhaps there was a checklist around progressive discipline issues that teachers and principals deal with as well. I take it that this suggestion is driven by your membership, to some degree, wanting some sense of, "I need to do this, this and this, in this circumstance."

Mr. David Clegg: Absolutely. All too often, particularly when students transfer schools, the OSR is vital for the receiving teacher to understand the needs of that student. We've found, too many times, that issues regarding students coming into the school pertaining to their behaviour, particularly violent behaviour, are not part of the OSR record. This allows opportunities for, unfortunately, incidents to recur where foreknowledge potentially could have prevented that.

Mrs. Liz Sandals: Okay. Thank you.

The Chair (Mr. Shafiq Qaadri): Ms. Savoline.

Mrs. Joyce Savoline: Understanding that there are some exceptions, Mr. Clegg, our research indicates that, first of all, teachers are already doing that reporting. There are very few drops on that, if any. But as I say, given that we understand that there are exceptions to what can be reported in some instances, would it be beneficial to mandate that principals must report this type of behaviour to the parents, to the board, to law enforcement officials, and document everything in a timeline?

Mr. David Clegg: The documentation is something that we believe—and it's inherent in our submission—has to happen if there's going to be consistent help for the students and help for the environment of the school.

With respect to the timeliness of reporting, we recognize that principals have to have a responsibility to ensure that the students whom they're concerned about are protected. That also does include those students who are potentially the transgressors. Providing information, in some circumstances, may in fact place those students at risk.

We do believe that there has to be a very clear line of reporting. With anything, there has to be some opportunity for sober reflection, to make sure that the reporting, in and of itself, does not create a further hazard.

That having been said, the duty to report is already in legislation. When any teacher believes that a student has been placed or is in—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Savoline. Mr. Marchese.

Mr. Rosario Marchese: Two quick things: First of all, I wanted to agree with you with respect to the issue of a teacher's obligation to intervene. I said, in my own remarks in the Legislature on this bill, that I felt that it leaves you very, very open to legal action and a risk of reprisal. There's nothing in the bill that deals with that.

Mr. David Clegg: No.

Mr. Rosario Marchese: It just simply says that you have a duty to intervene. I say to myself, "Holy cow. What does that mean in terms of what exactly I'm going to do in a very risky situation?" So I wanted to agree with you in that regard, and then ask another question, which the principals raised, once I reread it here, where they say that "more emphasis must be put on prevention and intervention." I really do agree with that, because reporting is one thing, but dealing with all the problems that you teachers have to deal with is really what we're not dealing with. There's sexual abuse, mental illness and substance abuse, and you get all of that in a school. If we don't get help to deal with that, you're left with reporting a particular problem, and then it comes back. That problem never disappears; it comes back. Any comment on that?

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Mr. David Clegg: Schools are a microcosm of the society in which they exist. Quite clearly, the influences that come into the school itself dictate, quite often, the type of behaviours that students exhibit and have to be accounted for. You have to get the underlying issues if, in fact, you want to do anything more than simply have a reporting mechanism.

The schools in this province, just like our society, have changed considerably. The underlying issues of students, whether they be the victims or the transgressors—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese, and thanks to you, Mr. Clegg, Ms. Rettig and Ms. McCaffrey, on behalf of your deputation and presence and written submission on behalf of the Elementary Teachers' Federation of Ontario.

LONDON ANTI-BULLYING COALITION

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Ms. Kathryn Wilkins of the London Anti-Bullying Coalition.

Please come forward, Ms. Wilkins and colleague. You've seen the protocol: 15 minutes. Please introduce yourselves. Please begin now.

Ms. Kathryn Wilkins: Honourable Chair, members and fellow speakers, good afternoon. My name is Kathryn Wilkins, and this is Corina Morrison. We are the co-founders of the London Anti-Bullying Coalition. We thank you for taking the time to listen and for providing us with the optimistic hope that together we can build a system more responsive to our victims.

Five years ago, a freelance journalist, having heard the similar tales of our families' struggles with bullying in our schools, arranged for Corina and I to meet. Initially, we provided emotional support to each other as we struggled to work within the system to resolve our concerns and found ourselves getting nowhere. It was the news of the tragic suicide of a local teenager, followed by the denial of the principal that his school had a bullying problem, that propelled us towards the formation of the London Anti-Bullying Coalition. Listening to the boy's father, Mr. Melo, talk about cutting his son out of a tree

and witnessing the pain that we only too recently ourselves had avoided led us to the mantra, "Never again shall we lose a child to bullying!"

Within three hours of announcing the formation of the London Anti-Bullying Coalition on a local radio station, we received 12 phone calls. I have listed a few of the concerns that were brought to our attention.

A teenager was set on fire getting off the school bus. During the period that followed, while both the school principal and the bus line were assigning responsibility to each other for keeping this child safe, the young man was set on fire a second time, which led the bus driver to advise the parents to put their child on another bus, as he could not guarantee that their son would arrive home safely.

A seven-year-old female was lured into a corner of her school playground, held down and sexually assaulted, resulting in a vaginal infection and suicidal ideation. All of the children were aware of what they called "the gross corner"; why weren't the staff? The response to the mother by the principal when she sought assistance was, "To be fair, your daughter started a kissing club." The principal's solution was to send the daughter back to school because it was winter, she had snow pants on and she'd be safe on the playground.

As a result of a five-year-old boy being terrorized on the playground daily until he is so anxious that he throws up before school, the father films the playground and shows the video to the principal, who refuses to view the material. The next time the father is filming the playground, the principal calls in a false report of a suspected pedophile and three police cruisers arrive with lights and sirens going to stop the father from filming.

A mother who was concerned with sexually inappropriate behaviour of a teacher and was demanding resolution is banned from her children's school and is not allowed to attend her daughter's grade 8 graduation.

Under the mentorship of David Millen from the Ottawa Anti-Bullying Coalition, we held a media conference to announce the formation. Our media conference was attended by John and Maria Melo, Mike Neuts and Cindy Wesley, all of whom lost a child due to this issue and strongly supported the formation of a parents' voice advocacy group.

At our town hall meeting the next week, we were surprised, as the 40 attendees we expected turned into 120 participants. We were a little overwhelmed. It seems like people thought we were already established and came looking for support, but here we were, just two moms who felt like we were in over our heads. It was made apparent that our community was fed up and looking for some answers. TVO was in attendance filming for their documentary Battling Bullies, which was nominated for a Gemini award and featured families who became political as a result of the system's failure to protect their children.

The LABC does not hear success stories; the LABC hears stories of situations being unaddressed and of policies and procedures either being ignored or used

incorrectly. The LABC has been told that the ministry does not micromanage their boards, and the boards state that they do not micromanage their administrators. Is it micromanaging to expect adherence to policy? Is it micromanaging to place accountability pieces into legislation? Is it micromanaging to consequence an administration that, despite adequate training, fails to respond to parents in a positive, collaborative way? We don't think so.

When policy and procedure fail, when the victim is blamed for being provocative, when the incident is overlooked because "boys will be boys," when parents are forced to seek alternative education for their children or are simply told that if their children stopped twitching, being gay, eating, reacting to the situation, it would improve, then who's responsible for making it right? At this point, no one is. Parents who contact the ministry are given no redress. Parents who contact their boards are offered no hope. Situations that are handled inappropriately by their schools are not remedied, and those who failed them are not held accountable. Where do parents go when the three systems appear to collude with each other to avoid accountability?

Without exception, our membership reports that they have been made to feel like overly involved, overly sensitive, unreasonable parents. They have been advised to teach their children some street smarts, enrol them in outside-of-school activities to help rebuild their damaged self-esteem, and to safety-plan with their child alternate routes to walk to school, how to avoid high-risk areas or how to turn the other cheek. Without exception, the victims and parents of victims do not feel heard, validated or valued. In our review of Bill 212 and now Bill 157, we feel that the victim is once again being ignored.

This system keeps parents at arm's length, blames them for not preparing their children for the real world and generally takes away the parents' ability to make the situation right. No one wants safety and a good education for their children more than the parent. The parent should be empowered by a system that works. The parent should have a process in which their energy is utilized in keeping their children safe. When you take away a parent's voice, when you do not assist them in making things right, you create parents who get political, involve lawyers in their battle, file human rights complaints, go to the media, pull their children from school or perhaps join a coalition.

The lack of accountability and the frustration with a broken system is what created us. Our parents are well aware of the policy and procedures, rules, regulations and legislation relative to their struggle. With millions of dollars put into safe schools, our members continue to ask us one simple question: "Who is ultimately responsible for keeping my child safe while they are in school?"

Bill 157 is a simple bill, and our members want more teeth put into it. They are seeking support for the victims and accountability when the system fails.

A recent statement in the House pointed to the fact that 93% of Ontario's two million students in publicly

funded education feel safe in their schools. Well, 7% of two million is 140,000 children in Ontario who are daily afraid to go to school. You can extrapolate those numbers out to include bystanders, bullies, parents on both sides and administrators, which makes the number huge, and it's a number that is not acceptable. If legislation was clear and concise, these numbers would be much smaller. It is on behalf of the silenced voices that I appear before you here today.

In our critique of Bill 157, which is included in the package we handed out, you will notice that all of our suggestions and amendments focused on the accountability piece and the support for the victim. We trust our ministry and our boards to create legislation, policy and procedure, and we know that they employ experts to inform the decisions that they make. We ask that you include the accountability piece, which includes timelines for responding, to give the parents a tool with which to resolve their child's concern and to assist in creating a culture of caring and respect in their schools.

The LABC is also pleased to announce that we are mentoring parents in other areas of our province on establishing their own coalition, with accountability and victims' rights as their focus. We do receive calls from every province, as it seems that most established coalitions are filled with rhetoric and are fearful of challenging the system. That being said, Corina and I have been compared to Mothers Against Drunk Driving, who, with time, changed the way that the issue of drunk driving was looked at and dealt with and in fact changed the cultural message about drinking and driving. It is our hope that we will reach a place where bullying is dealt with the right way all the time and angry parents don't have to form political movements.

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We encourage you to read the package of information provided. Enclosed is a detailed copy of our suggested amendments to Bill 157, some comments from our membership and a copy of the coalition's three-year report.

In the end, if no accountability or support for the victim is built into legislation, we will continue to assist parents navigating the bullying maze and we will continue to lobby our officials to ensure safety for all students. Thank you for the opportunity to speak with you today.

The Chair (Mr. Shafiq Qaadri): About two minutes per side. Ms. Savoline.

Mrs. Joyce Savoline: Thank you, both of you, for being here today. What I'm hearing is that, as the bill stands right now—let me put it this way: Would there be any difference in what happens to these kids once this bill is passed, the way it reads now?

Ms. Corina Morrison: No. Kids will still fall through the cracks.

Mrs. Joyce Savoline: What changes? You say "accountability" and "timelines." What specifically do you mean by "accountability"—that there is a consequence to those who did not follow through the reporting process?

Ms. Corina Morrison: Correct.

Mrs. Joyce Savoline: And you don't see any consequence in there now?

Ms. Kathryn Wilkins: None. Mrs. Joyce Savoline: Peter?

Mr. Peter Shurman: I have one question. Can you define "mandatory reporting" as you would like to see it defined?

Ms. Corina Morrison: What we would like is to make sure that when an incident is reported—it must be mandatory. We have trouble explaining to our parents that there is a difference between conflict and bullying. When it is truly bullying, we want the child to be able to report it to a teacher. We understand that teachers report to principals, but our parents want to know, if the principal does not do their part, where do they go next?

Mr. Peter Shurman: So mandatory reporting should go beyond the principal; that's what you're saying?

Ms. Corina Morrison: Absolutely. Mr. Peter Shurman: Thank you.

The Chair (Mr. Shafiq Qaadri): Mr. Marchese?

Mr. Rosario Marchese: Thank you both. I'm going to read your amendments as soon as I get a chance. My focus has been, in terms of the debate on this bill, on prevention, on those interventions and supports that give teachers the ability and tools to help so many problems that we're getting in the school system. So I focused on that. But I must admit, when I hear some stories about the inadequacy of principals not dealing with the problem, that upsets me as well. I don't see a problem with timelines. Timelines for reporting a problem or responding to a problem are a critical component. I think we need to deal with that. I think the government needs to focus on that.

Ms. Kathryn Wilkins: Our parents are waiting three or four months just to get a letter or a phone call back from their first complaint. There have to be some timelines. How long do you be patient waiting for people to work with you?

Ms. Corina Morrison: The other thing we wanted to mention was that our government has put millions of dollars into training our teachers, training our principals, yet on Thursday night we had a phone call from a parent whose grade 5 boy is being bullied and the principal gave the parent a list of five things the victim should do differently in order to remain safe in the school. So with all the millions being put in, why are we still re-victimizing?

Mr. Rosario Marchese: Do I have any time? The Chair (Mr. Shafiq Qaadri): Thirty seconds.

Mr. Rosario Marchese: As a former teacher, I just wanted to say that it's the role of the principal to establish that kind of caring environment—and the parents, of course, if they're active. We can deal with bullying but it requires all the players to come together and deal with that. Thank you so much.

The Chair (Mr. Shafiq Qaadri): Ms. Sandals?

Mrs. Liz Sandals: I'm just trying to really quickly read through your suggested amendments. Just to note that the word used in Ontario legislation that says you

"must" is "shall." So that's the one that we must put into legislation, and it means, "Thou shalt."

There is another amendment you've suggested around the age—17- to 18-year-olds. All that stuff is already determined in law. That's a standard exemption. I note that you're saying "24 hours" instead of "as soon as reasonably possible." So having noted that, what would be the main amendment that you would want, other than the things I just enumerated?

Ms. Kathryn Wilkins: Truly, if "shall" means "shall," then we'd like to see "shall" mean "shall," because we have seen "shall" mean "perhaps" and we've seen "shall" mean "possibly." So if no one is prepared to change the wording to "must" and then say, "If you do not do it, here is what happens," if no one is prepared to do that—if "shall" means "shall," then we need to see "shall" mean shall."

Mrs. Liz Sandals: Yeah, "shall" means "must" in law

Ms. Kathryn Wilkins: That's what we're told. Mr. Rosario Marchese: It's not happening.

Ms. Kathryn Wilkins: It's not happening—

Mrs. Liz Sandals: And that's why I'm asking, what is it that you would actually like to see—

Ms. Corina Morrison: Accountability and support for victims. We are tired of hearing that the aggressors will remain in school. We're doing everything humanly possible to keep them in school, but what are we doing for victims? We're allowing them to drop out of school; we're allowing them to go and get private education when we're paying public school tax dollars. Where is peace for the victim?

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Morrison and Ms. Wilkins, for your deputation on behalf of the London Anti-Bullying Coalition.

I would now respectfully inform members of the committee as well as our audience that we again are going into closed-door session, so I would respectfully ask all those who are not involved with the next presentation to please leave and to remind that Hansard microphone systems and all recording systems be off.

The committee continued in closed session from 1515 to 1526.

JUSTICE FOR CHILDREN AND YOUTH

The Chair (Mr. Shafiq Qaadri): I'm going to invite Ms. Martha MacKinnon, executive director of Justice for Children and Youth, to please come forward. Ms. MacKinnon, you've seen the protocol and I'd invite you to please begin. We'll distribute that for you. Your 15 minutes begin now. Go ahead.

Ms. Martha MacKinnon: I'd like to thank you for allowing us to appear before you today. I am Martha MacKinnon. This is Andrea Gatti, a lawyer of my office.

The first thing I wanted to say is that Justice for Children and Youth has acted for the kids who do bullying and the kids who have been bullied; for those who are charged with doing things for which they could get

suspended, expelled or excluded and those who don't feel safe when they go to school; and for those who feel that they get punished when they report not feeling safe at school. All of these are the kinds of clients who we represent and have for 30 years, so I hope that we can bring to you a sort of balanced approach and some useful comments on the legislation.

The first thing I wanted to say about Bill 157 is that if everyone in the school system were honestly doing all of their job all of the time every day, we probably wouldn't even need this legislation. Teachers already have a duty to maintain order and discipline in the school. Similarly, regulation 298 requires people to report to parents when there has been a transgression or a breach of school rules. However, the tragedy at C.W. Jefferys has made us aware that formalizing expectations, debating them in public and having this proceeding are all part of something that could help students further than they have been in the past.

We are generally supportive of Bill 157, as it exists, as part of an ongoing effort to make schools safe and welcoming learning environments for all of our students. However, there are some concerns, many of which we think can be addressed by way of regulation or program policy memoranda.

The first is that we can't go back to the zero tolerance, mandatory consequences regime that we had seven or eight years ago. It will be important, in our submission, to carefully monitor and ensure that disciplinary responses do not dramatically increase because of this legislation. We don't want to net-widen; we want to make sure that kids learn how to behave appropriately with each other in schools in preparation for the rest of their lives, where we hope they'll behave appropriately with each other as they wander through the public streets and in their work-places.

In order to make sure that we don't net-widen and that the effects are not discriminatory, which had been the allegation of the Human Rights Commission about the zero-tolerance regime, I'd ask you to consider just a few cases that might not happen thousands of times every day but are predictable or known.

The first is if a special education teacher who's teaching a young person who has Tourette's syndrome reported every time the teacher was sworn at, it would waste a lot of principal time and not actually fix anything. We need to be careful about the definitions and careful that we're not creating zero tolerance by using words that are fuzzy around the edges. I would ask you to consider the impact on special needs students, because no one wants to further make their lives difficult. They struggle enough as it is.

Similarly, when a five-year-old girl kisses an unwilling five-year-old boy in kindergarten, we shouldn't be calling it sexual assault. But I can tell you, and we refer to some of that in our written submission—I apologize it's not in French as well; we didn't have enough time to get it in both languages—that schools are describing that as sexual assault. When parents, not surprisingly, complain because they're worried that it makes their five-year-old daughter look like a pervert, what the school does, if they are willing to reduce the language, is change it to inappropriate touching, which is just code for the same thing. Again, there isn't a parent who doesn't know that inappropriate touching means sexually inappropriate. It doesn't mean it was one degree too hard or one degree too soft.

So it's important, again, that we define and use terms like "sexual assault" carefully. In my submission, they ought to include some kind of intent. One of the problems when you use language that's in the Criminal Code in an education setting, so language like "sexual assault," is that there's a whole body of literature about what that means under the Criminal Code, a whole body of stuff that can help us know whether or not it's a crime. But that can't be used by schools to decide whether—I mean, it might be better if they would, but they don't. It's an administrative law setting, and they're just trying to correct conduct; they're not trying to identify criminals. So the definitions are really important, and the intention of the child has to be part of that determination.

The next thing is we agree that it absolutely can only improve a school if a principal knows what's going on in the school, and they can't know everything unless they're told, so that can only be good. But we have existing police protocols. We have the existing violence-free schools policy, and those require the calling of police in many circumstances, including sexual assault.

What you may not know is that while if a nine-yearold—this was a call about an hour ago—a nine-year-old boy has been accused of sexually assaulting some sevenyear-old, if the school calls the police because they feel they need to, because that's what the violence-free schools policy says, and the police come and the kid's nine, they can't charge him anyway, but they write it down. They write down their notes; they have their notebook. In 10 years, when that nine-year-old wants to get into a faculty of education or an early childhood education program, that child may not be able to get in because the police record, if it includes the word "sex" or some variation of "sex," is subject to the police records retention policy, not what the Youth Criminal Justice Act says about how long they keep records. Most police forces, certainly Toronto and the GTA police forces, keep those records forever-forever-so that people who are 27 are stunned to find out that somebody thinks they are sexually deviant and they're banned from jobs forever, when no one really intended that, I don't think. It's about silly kid behaviour where they're exploring and learning and trying to figure out how to relate to each

All of that is to say I am very grateful that this legislation is not to come into force until February 2010, because one of the really good things about Bill 212 was that it gave a long lead time and there was time to develop appropriate PPMs and regulations and to consult and to inform, to educate teachers and caretakers and the catering staff and everyone in the school systems about

their new responsibilities. So it leaves time for the education piece and to develop policies that are more sophisticated.

The one part that I am concerned may need to be amended in the bill itself—I'm always happy to be persuaded that I'm wrong about that—is the notion that the principal must, and you've heard many people talking about it, unless it's not in best interests, report to the parents of the person who was allegedly harmed. The person who was allegedly harmed is in the best position to know what's in their own best interests. One of the things that I find ironic is that a child who is 15 could be injured at school physically, may need stitches, may have to go off to the hospital, and the hospital need tell nothing to the parents. The child, at 15, can probably decided whether or not they want stitches or whether they do or don't want a blood transfusion. They can make their own health care determinations, but they can't stop the school from reporting to their parents.

The Education Act, in my submission, needs to be more congruent with the other legislation that affects kids. So health is a capacity issue; there's no magic age at which you can consent to health care. The Municipal Freedom of Information and Protection of Privacy Act, which applies to the information held by schools, gives all of the rights of an adult, with respect to guarding their own information, to kids at 16; and yet the Education Act just says that if you're under 18 and living at home, then the choice will be made by a principal.

The Eaton case, which was Eaton and the Brant County—as we then had—Board of Education, was a case that went to the Supreme Court of Canada and was finally decided in 1996, with a decision released in 1997. What the court said then was not that there's a magic age but that when you're trying to decide the best interests of a child, the most important voice in that is the child's own voice. If they can express their views, then that is the most significant in determining their best interests.

So that is, in my submission, something about the bill that needs to protect the privacy, recognize the autonomy of young people and recognize that they're in an education system where their capacities develop every year.

Those are our submissions.

1540

The Chair (Mr. Shafiq Qaadri): Thank you. About 90 seconds per side. Mr. Marchese.

Mr. Rosario Marchese: Thank you, Martha, for coming again. You have made deputations here often, and I've always appreciated your views on everything that you've presented.

I agree with you. We can't go back to the zero tolerance policies, although I'm not quite sure we've left them completely, but I agree with that.

I agree with your point about how we deal with children who have certain problems like Tourette's syndrome or fetal alcohol syndrome and our desire or our ability to identify that and then say, "How do we deal with that so that we don't re-victimize some of the students?" I agree with that.

One of the problems we're dealing with as well, including doing prevention and making sure that teachers have support to deal with all these problems to begin with, is the fact that some incidents don't get reported by principals where they actually should be. We might disagree on what type of issue, and there has to be some judgment, but where in my mind it's clear they should be reporting and they're not, that's a problem. So the point to you is, what do you think about that?

Ms. Martha MacKinnon: Sadly, I think you can't actually pass a law that makes people have good judgment.

Mr. Rosario Marchese: No, that's true.

Ms. Martha MacKinnon: I wish you could.

Mr. Rosario Marchese: What about timelines for reporting?

Ms. Martha MacKinnon: The legislation says "promptly" or "as soon as possible."

Mr. Rosario Marchese: What does that mean?

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. To the government side.

Mrs. Liz Sandals: I'll just follow up. I've got two. As a lawyer, when you see something that says "as soon as reasonably possible," what does that throw into your mind? The second one is, we will be doing a manual on what is sexual assault, because it's so difficult. Understanding that the criminal definition may not be the useful definition, do you have any places to point us to find useful guidelines for not ending up with nine-year-olds who have been identified as sexually deviant?

Ms. Martha MacKinnon: The first one first, the "as soon as possible" piece: If you're actually evacuating the school because somebody has phoned in a bomb threat, reporting can be delayed until that's over. But it sure means before you leave that day, and it's a higher priority than anything else. You'd have to have a really good reason why something else was more important. That's my legal analysis of that.

The sexual assault piece: The truth is I probably remember from—not my childhood, I guess—my younger brother's childhood, good touch, bad touch. It's actually about touching without consent. It's not mostly about the sex part at all. If it's an actual sexual assault with intent—those are pretty clear; they're pretty police-driven things—there are likely to be charges—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals. Ms. Savoline?

Mrs. Joyce Savoline: You say you can't legislate against bad judgment. I totally agree with you, but should there be a consequence when someone in authority uses bad judgment and the process hasn't been followed?

Ms. Martha MacKinnon: I'd even back this up further. The code of conduct that every school is required to have says that teachers and principals are required to follow it, but the only people with consequences are kids.

Mrs. Joyce Savoline: So there is no consequence for the person using bad judgment, but there should be. You say the voice of the victim is the best voice. What happens in the case when the victim is scared out of their wits and they can't come forward, they can't sleep at night, they're wetting their pants, they're committing suicide? We're talking about violent sex crimes, student on student, where there is total fear. Where is the voice then?

Ms. Martha MacKinnon: If I understand you, what I was talking about is the voice of the child to decide whether or not the principal needs to report to the parent of that child as opposed to the incident coming to the attention of the principal to begin with, because if it doesn't—that's what this bill attempts to overcome, and if it doesn't get to the attention of the principal, nobody can do anything.

Mrs. Joyce Savoline: How does a six-year-old—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Savoline, and thanks to you, Ms. MacKinnon and to your colleague, for your deputation and presence on behalf of Justice for Children and Youth.

CANADIAN UNION OF PUBLIC EMPLOYEES ONTARIO

The Chair (Mr. Shafiq Qaadri): I invite our next presenters, members of CUPE, Terri Preston and Stella Yeadon, to please come forward. You've seen the protocol. You have 15 minutes in which to make your presentation, and I would respectfully ask you to please begin now.

Ms. Terri Preston: In Ontario, CUPE represents over 50,000 school board workers who are working in unionized, non-teaching occupations. Our members' work contributes on a daily basis to the safety and security of students in Ontario's schools. Providing safe and secure learning environments is a key goal of CUPE members employed throughout the publicly funded school boards in Ontario.

We commend the Ontario government for making school safety for students and education workers a priority. However, we have several concerns regarding the implementation of Bill 157 as currently written.

Bill 157 has four sections that attempt to answer stakeholder concerns with the current Education Act to improve student safety. These are sections 300.1, 300.2, 300.3, which is the notice to parent or guardian, and 300.4, intervention by board employees. We're not going to address, in our presentation, the notice to the parent or guardian, but we'll focus on the other three sections of the act.

Regarding the delegation by principals, we feel that this section makes no change to existing practice in Ontario schools and, as such, represents an unnecessary legislative involvement in the operation of Ontario schools.

We also submit that with the funding issues that are facing schools, what happens when there is a teacher in charge is that, generally speaking, there is no supply teacher to take on their duties. While they're in charge, they're also teaching a class. If there is an incident that comes up, that person is then pulled away from a class, and you have 20 to 25 students that somebody is going to have to be assigned to. Sometimes that ends up being an

educational assistant or someone else who shouldn't be assigned to overseeing the instruction of children.

We also submit that the act needs to be clear that there are limits to the delegation of authority of the principal and that, while it is written in this part of the act, we want to make sure that it stays within this part of the act. For labour relations purposes, we think it should be the principal who is in charge of the school.

We also think there should be time limits to the length of time that someone can be assigned to be the delegate authority in charge of the school. This doesn't talk to that kind of time limit, but we would submit that this is meant to cover when somebody's out of the school for a meeting, as opposed to away for a two-week or a week-long period.

Regarding reporting to the principal, we have serious concerns with this section of the bill. We think it's unworkable. It talks about two exceptions to the reporting. While CUPE members are prepared to report, it doesn't talk about the form that the reports should take, whether it's written or verbal. We submit now that it may become part of legislation. We would be telling everybody to do a written report so that they are not liable for not reporting, or somebody saying, "I didn't get a report on that." We think it will create volumes of unnecessary and repetitive reports from CUPE members and other school board staff.

The two exceptions also create a problem. You're supposed to report unless you know that somebody else has already reported the incident. Well, how do you really know that somebody else has reported the incident? Again, we would be telling everybody, "Make sure you report." The other exception is that you don't have to report if you believe that your report would not provide the principal with any useful additional information. How would you know that unless you report and the principal has all the pieces of the puzzle? So we think those exceptions really don't add anything to the act. In fact, in our case, we would be saying, "Report everything, and do it in writing." We think that's going to create a problem in schools.

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We would also suggest that when it comes to student behaviour, we also think of "students" as the students in continuing education classes, such as international language classes, and adult students, whether they be in the adult day school or ESL classes or other classes, so that those provisions apply to all students attending school boards.

Regarding intervention by board employees, the act talks about asking staff to make judgment calls about the type of student conduct that is, the act says, "likely to have a negative impact on the school climate." That's very broad. Somebody's interpretation of somebody's behaviour and whether it has a negative impact on the school climate is wide open for interpretation. So I think you'll have people intervening in things based on a personal judgment.

Another issue that has been raised by educational assistants, in particular if you're working with a special-

needs student and you observe two students engaged in inappropriate dialogue with each other, you have an obligation under this act to intervene, but you're walking down the hall with a special-needs student whom you are in charge of. So often in schools, it's not a question of just saying to somebody, "That comment's inappropriate; stop," and that's the end of it. There's often an exchange that goes on between the intervener and the student, and in the meantime you have responsibility for a special-needs student. So I think there are some questions about the type of intervention and who you're actually asking to intervene in these situations.

We also have some concerns—and Stella will address these concerns—regarding the legislated intervention and changes in the Occupational Health and Safety Act that have just been introduced. Stella will address those.

Ms. Stella Yeadon: Bill 168 is the amendments to the Occupational Health and Safety Act. First, I want to point out that in Bill 157 there's no clear definition of concepts and things like "direct contact," "intervention," and "useful additional information." Normally in bills that are proposed legislation, in the preamble there's a definition. There's almost a glossary of terms and what they entail. That's missing from this. So that leaves the enforcement of Bill 157 open to judgment calls, and Terri has mentioned that.

Specific to Bill 168, there is a section in the proposed bill that allows workers the right to refuse with the threat of a potential danger and to actually physically leave the immediate hazard area. We feel that this piece of legislation that calls on people to intervene and that piece of legislation that allows people who feel a perceived hazard or threat to actually leave the worksite or that immediate area—

Ms. Terri Preston: I would just like to add that in terms of taking our role seriously as part of the school community, we are prepared to support efforts that take on the issues of gender-based violence, homophobia, sexual harassment etc. We need training at all staffing levels, though, to ensure that people are trained in appropriate intervention on those issues. Support staff working within school boards are not often receiving that kind of training, and any training that's initiated there would have to extend to everybody who's expected to intervene.

I think that's it.

The Chair (Mr. Shafiq Qaadri): Thank you. We have about 90 seconds per side, beginning with Ms. Sandals.

Mrs. Liz Sandals: I wonder if we could go back to the delegation by principals. It's clear in the bill that if it's a teacher in charge, that's just while the principal and vice-principal are out of the school, but I was interested in your comments that delegation should never be for any purpose other than student discipline, which is what I think I heard you say, and delegation could be to a vice-principal. Wouldn't one have, in many situations, delegation to a vice-principal being much broader than simply student discipline?

Ms. Terri Preston: Yes, and in that case we're referring to, we don't want labour relations issues to be

dealt with by teaching staff. But we recognize that viceprincipals do have supervisory responsibilities.

Mrs. Liz Sandals: Okay, so this isn't "Don't give VPs supervisory"; it's just narrowing in on the temporary nature of the teacher in charge.

Ms. Terri Preston: Right, yes.

Mrs. Liz Sandals: I'm glad we sorted that out.

The Chair (Mr. Shafiq Qaadri): To Ms. Savoline.

Mrs. Joyce Savoline: Mr. Shurman.

Mr. Peter Shurman: I expect you to come here and advocate for your members, so labour relations is what you're discussing, but you point out that a lot of this is already there when it comes to reporting, and I believe that's true. It speaks to amendments that are required to create a mandatory flow. Why don't you believe that right now, with amendments, we couldn't get a good process in place of mandatory reporting and a flow all the way up so that the decision-making was taken away from your members?

Ms. Terri Preston: What I'm saying is that the act as it's currently written is going to create an incredible paper flow that you have not anticipated. So what I said was, if it is legislated, we will comply, but we will be complying in writing to make sure that there are no liability issues for our members.

Mr. Peter Shurman: There's a legitimacy—

Ms. Terri Preston: We're not saying, "Don't go there"; we're saying that if you go there as it's currently written, unless there are explicit changes to the act as it's currently written, we think it's going to create problems.

Mr. Peter Shurman: That's why we have hearings: to get some amendments that do that. Let me ask you for a moment, in the brief time that we've got left: You referred to judgment calls a couple of times. Isn't it inherent in any job, notably one where there's so much responsibility involved, as teachers and principals would have, that judgment calls have to be made, based on expertise?

Ms. Terri Preston: Yes. I believe that, but I think what you might end up having is, are you intervening because you don't like the way—

The Chair (Mr. Shafiq Qaadri): I need to intervene here. Thanks, Mr. Shurman. Mr. Marchese.

Mr. Rosario Marchese: He's brutal, I'm telling you.

Mr. Peter Shurman: He is.

Mr. Rosario Marchese: Terri and Stella, thank you. I agree with many of the concerns you've raised, in fact. There are serious personal safety implications that can arise for school board employees who will be legislated to intervene. I believe that there are a lot of people who just don't know how to intervene on some very delicate matters, and you will be required to do so. That requires teachers, as well, in some cases to put themselves at risk. So I do worry, and I don't know how they've dealt with that.

I agree with your point that "It is the view of CUPE ... that only properly trained school board employees should be making interventions with students." You make that on page 4. And your point about writing everything on

paper: You're going to have to. You make some very good points on page 3, the last two points about how an employee with confidence can know that a report about an incident has already been made to a principal. You'll never know. You're just going to have to write everything. Similarly, with the second point that you made at the end in the other paragraph, no one's going to know anything. You're going to have to write everything, so a whole lot of people will be writing a whole lot of reports. I don't think the government may have thought that through.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Preston and Ms. Yeadon, for your deputation on behalf of CUPE

Et pour vous, monsieur Marchese, la brutalité est l'égalité.

M. Rosario Marchese: Voilà.

KAREN SEBBEN

The Chair (Mr. Shafiq Qaadri): We now move to our next presenter, Ms. Karen Sebben.

Welcome, Ms. Sebben, to you and your colleagues. You've seen the protocol. You have 10 minutes in which to make your deputation. I'd respectfully ask you to please begin now.

Ms. Karen Sebben: My name is Karen Sebben, and my family and I live in York region. I have my son Daniel here with me today as well, my moral support. Daniel wants to be present simply because the outcome of this bill will ultimately reflect on the safety of future students. It's too late for him, but he wholeheartedly supports any student who has lived the experiences he has. To be fearful of your life and contemplate suicide is too much to bear at any age, let alone at a young age and in an environment he expected to be safe in. As a result, he lost his high school years, which is something he can't get back.

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I'm here today because of my dissatisfaction with our government as it relates to the emotional and physical well-being of some of our schoolchildren, and our own personal history as it relates to a school system that I feel is fundamentally in need of change.

Parents in our region often have to deal with school and administrative reluctance to get involved with excessive bullying issues. Board administrators often use legislation that is built around individual cases and "schools know best" policies on how to deal with excessive bullying and student-on-student violence as an excuse for non-compliance in many cases. This is widespread throughout our province.

Clear legislative language that is not up for interpretation and clear actions defined in this legislation on how to deal with bullying and student-on-student violence issues are needed to ensure streamlined board and school compliance.

I have concerns with certain language like "shall" as opposed to "will"—that has since been clarified—and "as

soon as reasonably possible" as opposed to a clearly defined time limitation. The language in this bill is openended and subject to different interpretations. A clear course of action is desperately needed to fix the problems this legislation was intended to tackle. It is required, should there ever be a difference of opinion between a principal and the legal guardian of a child. A time limitation would offer something definitive and, further, it would provide the principal with a support mechanism as his or her actions would not be called into question.

Bill 157 is flawed in that it leaves reporting to police to the discretion of principals. What you and I deem "a serious nature" may differ and it sends two messages. Firstly, if an incident is not reported to the police, the aggressor may not suffer the consequences necessary. Secondly, a message is sent to the victim that his or her worth within the school community is of no importance.

The Ontario Principals' Council has stated that "criminalizing students for their involvement in minor altercations is an overreaction." I disagree. Our Criminal Code is clear. If there is an act of aggression or even a minor altercation that falls within the list of offences included as grounds for suspension or expulsion, then it is not a minor altercation and police must be called. We can all remember the young boy who had a belt taken to him by two older students. It was assault, pure and simple. How will accountability be addressed if a parent feels that police should have been called, but the principal, using discretion, made the decision not to?

Ms. Sandals has also stated that mandatory reporting to police is clear and that all school boards have police protocols that comply with provincial guidelines and, therefore, did not need to be included in legislation. I disagree for the following reason: I took the time to meet with my police force to discuss the protocol and to specifically find out how they would deal with a criminal situation if it takes place in a school community as opposed to the mall parking lot. I was told that the same situation in either location would be treated the same and that extrajudicial measures would be followed.

As a result of that meeting with police, I had discussions with teachers at the high school level who work closely with their beat police. These beat police have made it very clear that there have been instances in the past where they would have liked to proceed with laying criminal charges but advised that school administration was tying their hands. Since when does school administration dictate how our police force does its job, and further, as a parent, how do I digest this conflicting information?

On March 23, 2009, Minister Wynne stated "We remain committed to helping all kids reach their potential." She further stated that "The only way that we will ensure safety for all of our students at school is if all people involved in students' lives take responsibility and work together." Indeed, and well said. It takes a community to raise a child, but I don't understand how this can be accomplished with open-ended and unclear language within our legislation and police force confusion on how to uphold the Criminal Code on school grounds.

I firmly believe it is every child's right to receive a safe education. Differences between our children shouldn't matter. It shouldn't matter if that child is gifted or with special learning needs, but it does matter if that child is an aggressor or victim. Our safe schools legislation thus far is very clear in that the focus of our government is for the benefit of the aggressors of our school communities.

Teachers have told me that when they routinely intervene as they come across negative or disrespectful behaviour that requires disciplinary measures, they are not always supported and discipline is not always followed through with at the administration level. This cannot be considered working together. What accountability can a parent expect if consequences for the negative behaviour of a student are not followed through with on an administrative level?

Currently within Bill 212, there are procedures in place to assist aggressors within our school communities to remain in school and move forward with their education. It's a good step and it's necessary, but Bill 212 does not speak to all kids either. The safe schools action team, in their report of December 11, made good recommendations relating to victims. It is a shame that out of these recommendations, Bill 157, if passed, will not address removing the alleged aggressors. In our personal situation, the fact that the aggressor remained in my son's school exacerbated the degree of unacceptable risk he endured. What does our Ministry of Education intend to do with some or all of the very good recommendations put forth by the safe schools action team? For example, in our area, prior to Bill 112:

"Discretionary Expulsion Criteria ...

"(ii) the student has engaged in an activity (on or off school property) that causes the student's continuing presence in the school to create an unacceptable risk to the physical or mental well-being of another person(s) in the school or board."

In our situation, an unacceptable risk to our son was most definitely present. The injurious behaviour from his aggressor continued for three years. My child was under the care of an outside psychologist and my school administration was aware of this. The aggressor's continued presence in the same school as my son for three years created an unacceptable risk to the physical and mental well-being of my child. As a result of policy not being followed, the consequences that the aggressor endured did nothing to change the behaviour. The aggressor remained at school and continued to learn; my child continued to decline academically and emotionally. He became suicidal and to this day still suffers from chronic stress.

There was a board policy displayed on the website. It was plain and clear for any parent like me to read and understand, yet my child endured for three years. It's either policy to be adhered to or it's not policy. What is the purpose of an operational policy if it is not adhered to by administration on grounds of discretion and interpretation?

I wrote to Minister Wynne on a number of occasions to request that she direct the safe schools action team to

consider the possible life-long ramifications of a once academically successful and happy student who has become a student at risk as a direct result of student-on-student violence. At the same time, I explained our personal plight. I received no direct answer; I received no empathy or sympathy from the minister; I received no acknowledgment that something, somewhere, went wrong; and I certainly received no accountability. I received Bill 157, which is clearly devoid of any type of accountability due to the lack of clear action and directions needed to address the problems that our school system currently faces.

Ms. Sandals has also stated in the past that "sadly, we know there are young people who do not feel safe." If this is truly unacceptable, why did the ministry allow my son to continue looking over his shoulder for three long years while he attempted to learn—three long years of waiting to see that he mattered? He's not the only student who has experienced this, and he won't be the last. It would—

The Chair (Mr. Shafiq Qaadri): You have about a minute left, Ms. Sebben.

Ms. Karen Sebben: Okay.

In conclusion, I would like to state that I have a difficult time believing that local school boards and their officials, once granted the right to interpret this legislation, will ever actually coincide with the spirit of this bill or this committee. I'd like to take the opportunity of thanking the committee for attending here today and for listening to our family experience, which happened as a direct result of discretionary powers.

The Chair (Mr. Shafiq Qaadri): Thank you very much. We really have just 30 seconds. We'd like to offer that to any takers.

Thank you, Ms. Sebben, to you and your family for coming forward.

Ms. Karen Sebben: Thank you.

ONTARIO ENGLISH CATHOLIC TEACHERS' ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenters to please come forward: Mr. James Ryan of the Ontario English Catholic Teachers' Association and his colleague.

We'd invite you gentlemen to be please be seated. Please begin. Just before you do, I'd inform the committee that we will be having a vote in the House at some point, for which purpose I will suspend the committee for about 10 minutes. Of course, your time will be maintained, but we may be interrupting at some point. Please begin.

Mr. James Ryan: Thank you. My name is James Ryan. I'm the first vice-president of the Ontario English Catholic Teachers' Association. On my immediate left is Marshall Jarvis, the general secretary of the Ontario English Catholic Teachers' Association. Combined, we represent over 40,000 teachers who teach in our English Catholic publicly funded schools.

1610

Let me start by saying that safe schools are a very serious concern for our members. They're absolutely adamant that all staff, all students, all parents and all of our greater community be safe in the province's publicly funded schools.

In terms of the legislation, we do have some concerns. First of all, in terms of ongoing consultation, we believe that it's important that the government of Ontario, the Ministry of Education, continue to consult not just with the Ontario English Catholic Teachers' Association but all of the stakeholder groups on safe schools issues.

I'd like to give you an example of where this consultation will be important in the future—and certainly we have had talks with the ministry on this, up to this date—and that's on the issue of the sharing of information. I used to be a teacher at Sunnybrook and Women's College Hospital in the adolescent psychiatric unit. Often we'd return students to schools after a problematic experience, but I was never able to share with those schools, principals and teachers some of the concerns because of privacy legislation. That exists with reference to the criminal justice system as well. Often, our teachers and our principals in schools are not equipped to deal with the specific problems that students have in those areas. I just wanted to point that out as an example of where we need to have ongoing consultation with the Ministry of Education and why that is so vital.

I refer you to our document here on page 3 and to section 1.09. This is an area where we have a grave amount of concern where we of course put on our lawyer's hat, and that's with the delegation to someone called "the teacher in charge" under this legislation. Here we feel that it's absolutely important that this must be a voluntary assignment and that it must be posted. There are a lot of potential liabilities for members who take on the role of the teacher in charge. We feel that they certainly have to be protected, and boards do not always—in fact, rarely—legally protect our members. We are usually responsible for doing that.

To give you an example—and obviously I can't use names or anything—of where one of our members was exposed on an issue like this was in a school where there was a zero-touch policy. That teacher, at a sports event, directed a student by tapping them on the shoulder to go to another section of the stadium. As a result of that tap, there was actually a Catholic Children's Aid Society investigation of that member. That investigation cost us many thousands of dollars—the association; it was not the school board that defended that member. So we do have concerns about this position and what liabilities members might potentially encounter.

On page 4 we go on to look at the role of the teacher in charge. We'd like to really limit what they do, for the same reasons. Here, what we really think should happen is, their responsibilities need to be limited to reporting to their superordinate—either the principal, superintendent or vice-principal in that school—and relaying that event rather than calling the parents and being subject to that

liability. In a lot of our schools, particularly our secondary schools, there are more than one administrator in the building. They have principals and vice-principals. In those cases, we think there should always be an administrator on site. There should never be a situation where all of the vice-principals and all of the principals are called away to a meeting, which does happen now. Principals go to an awful lot of meetings at the board. They're out of the school, in our members' opinions, far too often. But in schools where there are multiple administrators, there should be a policy that one administrator is always on site.

I'd also like to draw your attention to page 6. On page 6, we state that Bill 157 should be amended to require principals who receive a report under this to report on the results back to the teacher. Too often when teachers report incidents to principals, there is a feeling on behalf of the members that it doesn't go anywhere, that it stays in the principal's office and doesn't go beyond that. What we really need to do is require that when principals are reported to on a safe schools issue, not only do they carry that on, but they relay to the teacher who gave them the initial report that they have carried this action out and what they've done.

Finally, just drawing your attention to the duty to intervene, going back to that first incident at the ball game, I'd just like to say why that is a concern. It really puts our teacher members in a vulnerable position legally. We have many responsibilities. We have legal responsibilities and we also have responsibilities to the college of teachers, and we are very concerned that a duty to intervene here, as much as teachers do naturally intervene in behavioural incidents, would leave our members liable, especially if that were to require a physical intervention which our members are not trained for.

I would thank the committee for the opportunity to present today, and I'd be prepared to accept questions.

The Chair (Mr. Shafiq Qaadri): Thank you. A very opportune moment. You have, actually, about seven minutes for questions, which we will reconvene for.

I inform the committee that we have a vote within, I believe, 10 minutes or so, so I'll suspend committee proceedings—

Mr. Vic Dhillon: Seven minutes, Chair?

The Chair (Mr. Shafiq Qaadri): Seven minutes for questions; 10 minutes for the vote.

I will now suspend the committee so that we may go and actually vote. Thank you.

The committee recessed from 1615 to 1632.

The Chair (Mr. Shafiq Qaadri): We'll reconvene our committee. We have quorum. We'll begin with the PC side. I just inform you, Mr. Ryan and your colleague, that you have precisely two minutes and 37 seconds per party. Mr. Shurman.

Interjection.

Mrs. Joyce Savoline: Okay, well then I will. Thank you for being here today. I understand the points you made, and as you might well imagine, they mirror some of the things that the elementary teachers' federation also said to us.

I guess my question to you is, without a timeline actually being codified and without a clear understanding about which kinds of incidents—which obviously aren't the one-offs in the playground. Nobody is talking about stuff like that; we're talking about the serious stuff. Do you agree with the suggestion of putting in place a mechanism where parents, the school board and others know about it so that there's a clear, concise process that everybody can rely on, but should it not be followed by the authorities so that there is a consequence to that process not being followed appropriately? Who decides? How do we create that mechanism?

Mr. James Ryan: I guess I won't respond quite directly, but what I'd say is I think that's reasonable but I think our perspective here is that teachers themselves not be required to make that report directly to parents but they be required to make it to their superordinate, the principal—

Mrs. Joyce Savoline: Which they're already doing.

Mr. James Ryan: —or the vice-principal.

Mrs. Joyce Savoline: Yes.

Mr. James Ryan: I think it could be reasonable to expect principals and vice-principals to make those reports to parents.

Mrs. Joyce Savoline: Should it be expected that there would be a consequence somewhere down the line, some accountability, if that doesn't happen?

Mr. James Ryan: In terms of teachers, and also— Mrs. Joyce Savoline: I'm talking about within the process.

Mr. James Ryan: I can only speak for teachers, principals, superintendents, directors. We're all members of the Ontario College of Teachers, and because we're members of a professional association, there are guidelines and rules of misconduct that we have to follow, and we are subject to the discipline of the college for not carrying out our responsibilities. Not only does that go for teachers but also our superordinates as well. I would say that's taken care of by the standards of practice and the professional standards of the college.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Savoline. Mr. Marchese?

Mr. Rosario Marchese: Thank you both for the presentation. I have to tell you in my own remarks, the duty to intervene bothers me because it doesn't define what kind of intervention, but in my mind it implies everything. It may imply that you intervene in some physical altercation, that you've got to get involved in that altercation and if there's some exchange, which is tough, however those views are, there's a duty on you to intervene. It could impose a problem on you, physical, I suspect, usually. It could be something else, but usually it's physical. I don't think they thought that through either. I understand the duty to report, but I think the duty to intervene has a lot of implications for teachers, so I wanted to say that I agree with that.

I also agree with your point about making sure that there are support materials for boards to assist principals with a process for investigating incidents, including investigations involving students in special ed. You just list one or two examples, but you're talking about a whole list of things, I'm assuming, in terms of training?

Mr. James Ryan: Correct.

Mr. Rosario Marchese: And I'm assuming they're getting some of that training, but maybe it's not complete and/or thorough. Is that possible?

Mr. James Ryan: Certainly in terms of teachers, the training isn't there. As far as principals, we're not completely aware of the training they receive. Is that in my

personal opinion? Yes, I would agree with you.

Mr. Rosario Marchese: You talk about the idea of a teacher in charge, that it should be voluntary, and the Ontario Elementary Teachers' Federation said as much as well. I'm assuming you told that to the government in discussions you might have had, or is this the first time you're raising it?

Mr. James Ryan: Our government relations staff meets, as you know, with all of the members of the

House---

Mr. Rosario Marchese: So they know about it?

Mr. James Ryan: Actually, I'd direct that to my general secretary, as he's more intricately involved in that.

Mr. Rosario Marchese: What did they say when you raised it with them?

Mr. Marshall Jarvis: What I can tell you is that we are involved in discussions with the government, through the Ministry of Education, in a number of different forums. We have raised this issue. We will find out what they'll say when the final form of the legislation comes forward.

Mr. Rosario Marchese: I see. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. Ms. Sandals?

Mrs. Liz Sandals: I just note that in terms of the duty to intervene, the reason that there is regulation-making authority is to make sure that we can actually come up with exemptions to make it clear that we aren't suggesting that people should insert themselves in the middle of a knife fight or something. It's clear that we don't want our staff, at any level, coming to harm. We understand that we need to do some work in the policy guidelines.

I'm interested in the whole issue of reporting back to teachers who have reported to principals that something has gone amiss. Could you share with us: How often do you find that teachers don't get information back about what has happened in response to certain incidents?

Mr. James Ryan: I'll have to speak out of my experience as a classroom teacher, having been in the classroom less than two years ago. Quite often, our members do experience that: They report an incident, they often document it, and in some cases where, let's say, there's a suspension, they get paperwork back and they'll get communication. In many cases, however, they don't know what has happened, especially at the secondary level. There is no communication back to them. When I was a staff rep in the school, on the issue of child welfare cases

with children's aid and Catholic children's aid and Jewish family services, I'd often have to tell them that it's not good enough to just take the principal's word that they've reported to these agencies. You have to make sure, because they're liable in those cases. But many colleagues have reported to me that they've gotten no feedback on it.

Mrs. Liz Sandals: You've just raised something that's really important, because I hear you say that you're getting feedback about discipline by principals, but you don't necessarily get feedback from children's aid. It may well be that the principal and the board got no feedback from children's aid either—the responsibility, because you're switching pieces of legislation, that usually there is no feedback to the board either on children's aid reports.

Mr. James Ryan: Our main concern is the feedback

from the principals—

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Ryan and Mr. Jarvis, for your presentation on behalf of the Ontario English Catholic Teachers' Association.

ASSOCIATION DES ENSEIGNANTES ET DES ENSEIGNANTS FRANCO-ONTARIENS

Le Président (M. Shafiq Qaadri): Notre prochain présentateur est M. Benoît Mercier, président de l'Association des enseignantes et des enseignants francoontariens. Bienvenue, monsieur, et comme vous avez vu, vous avez 15 minutes pour votre présentation, et si le temps le permet, des questions avec tous les partis politiques. Commencez, s'il vous plaît.

M. Benoît Mercier: Comme il était mentionné, je m'appelle Benoît Mercier. Je suis le président de l'Association des enseignantes et des enseignants franco-ontariens. Je suis fier de représenter les quelque 9 500 membres de la profession enseignante qui œuvre dans les

écoles de langue française en Ontario.

Mesdames et messieurs, permettez-moi tout d'abord de vous remercier d'avoir accepté d'entendre la présentation de l'Association des enseignantes et des enseignants franco-ontariens traitant du projet de loi 157. Nous avons jugé important d'intervenir dans ces audiences pour quatre raisons :

(1) L'AEFO est d'avis que les écoles de l'Ontario doivent offrir aux élèves un milieu sain et sûr dans lequel ils peuvent apprendre et s'épanouir comme individus.

- (2) L'AEFO croit que le projet de loi 157 ne constitue pas une réponse adéquate aux problèmes liés au harcèlement et à l'intimidation que vivent certains élèves dans nos écoles.
- (3) L'AEFO regrette que le projet de loi 157 ne reflète pas l'ensemble des recommandations du rapport de l'Équipe d'action pour la sécurité dans les écoles, notamment celles qui sont axées sur la prévention et qui assureraient davantage la sécurité des élèves.
- (4) L'AEFO déplore que le projet de loi 157 augmente la responsabilité du personnel enseignant sans offrir les moyens de s'attaquer aux racines du problème.

Depuis plusieurs années, l'AEFO travaille de façon proactive avec le Centre ontarien de prévention des agressions à réduire, à prévenir le harcèlement et l'intimidation dans les écoles de langue française en offrant des ateliers, des formations d'appoint et des outils pour aider autant les élèves ayant subi de l'intimidation que ceux ayant intimidé.

Comme nous l'avons souligné dans notre mémoire, le projet de loi 157 contient des lacunes importantes. Nos principales préoccupations se retrouvent sous huit thèmes. Il s'agit de la délégation, du rapport à la direction d'école, de l'avis aux parents, de l'intervention, de la formation, du curriculum et des ressources, de l'impact sur les tâches et les conditions de travail des membres de l'AEFO, et finalement, de l'impact particulier sur les écoles de langue française.

Nous croyons très important de vous préciser quatre des thèmes.

L'AEFO croit que la sécurité des élèves doit relever de la direction d'école et que celle-ci ne doit pas déléguer les responsabilités, qui lui sont attribuées en vertu du projet de loi 157, à une enseignante ou à un enseignant. De par leur connaissance des différentes lois et de leur formation en matière de divulgation, de confidentialité et de protection des droits, l'AEFO estime que les directions d'école sont les mieux placées pour exercer un vrai rôle de surveillance dans la sécurité dans les écoles.

L'AEFO croit que le projet de loi 157 n'est pas suffisamment clair quant au sens que l'on doit donner à plusieurs thèmes, tels que « raisonnablement », « supplémentaires utiles ». Afin d'éviter toute confusion ou ambiguïté, nous demandons que soient clarifiées l'intention et l'interprétation du projet de loi en ce qui touche les conditions qui pourraient faire en sorte qu'une enseignante ou un enseignant soit obligé ou ne soit pas obligé de faire rapport à la direction d'école. De plus, nous recommandons fortement au ministère de l'Éducation de développer un formulaire provincial uniforme de rapport à la direction. L'AEFO déplore que le projet de loi 157 manque de clarté et croit que le ministère de l'Éducation doit définir clairement tous les termes qui touchent l'obligation ou non d'intervenir et les types d'interventions qui sont appropriées.

Pour le bien-être de ses membres et des élèves qui sont sous sa responsabilité, l'AEFO croit qu'il est essentiel de développer des directives et des conditions claires sur les types d'interventions appropriées et de communiquer ces directives dans le cadre de formation appropriée. L'AEFO formule cette recommandation dans le but de permettre au conseil de former adéquatement leur personnel durant les heures de travail. L'AEFO recommande alors que le projet de loi 157 ne soit pas mis en vigueur avant que les paragraphes du projet de loi 157 qui touchent l'intervention des employés du conseil ne soient clairement définis par le ministère de l'Éducation et que les employés du conseil n'aient reçu une formation appropriée selon leurs rôles et leurs responsabilités.

Comme nous l'avons mentionné dans notre mémoire, l'AEFO s'inquiète des répercussions possibles de la mise

en œuvre du projet de loi 157 sur l'évaluation du rendement des enseignantes et des enseignants. L'AEFO croit qu'aucun élément découlant du projet de loi ne doit faire l'objet ou avoir d'incidence sur l'évaluation du rendement des enseignantes et des enseignants.

L'AEFO tient aussi à faire part au comité permanent que les conseils scolaires doivent assumer, à leurs frais, la protection, la défense et la représentation de tout membre de leur personnel accusé de ne pas avoir rapporté un incident et/ou de ne pas être intervenu correctement auprès d'un élève, d'un parent, de l'aide à

l'enfance ou de la police.

L'AEFO veut s'assurer que le Comité permanent de la politique sociale est conscient de l'importance qu'il faut accorder au fait français dans la mise en œuvre et dans l'application du projet de loi 157. La mise en œuvre de ce projet de loi pose des défis particuliers aux écoles de langue française. Ces défis sont notamment dus à la pénurie de ressources, de personnel qualifié, de matériel adéquat en français, de services d'appui pour les élèves, de services gouvernementaux en français et d'organismes communautaires pouvant offrir des services en français. La bonne mise en œuvre d'un projet de loi mérite un financement qui tient compte de la réalité particulière des écoles et de la communauté qu'elles desservent.

En conclusion, l'AEFO croit qu'il faut des règlements pour encadrer le fonctionnement. Cependant, afin d'assurer la sécurité dans les écoles, il faut offrir aux élèves davantage de services d'appui. Comme l'AEFO l'a souligné dans ce mémoire, le projet de loi présente plusieurs lacunes. L'AEFO demande donc au Comité permanent de la politique sociale de tenir compte de ses recommandations et d'amender ce projet de loi pour qu'il appuie davantage le personnel scolaire et les écoles franco-ontariennes dans la mise en place de mesures qui assureront aux élèves des milieux d'apprentissage sains et sûrs.

Monsieur le Président, c'est comme cela que se termine ma présentation.

1650

Le Président (M. Shafiq Qaadri): Merci, monsieur. Nous avons approximativement deux minutes pour chaque parti, commençant avec M. Marchese.

M. Rosario Marchese: Merci, Benoît. Une question que j'ai posée aux autres auparavant: l'obligation d'intervenir. C'est un problème, quant à moi, et c'est un problème pour tous les enseignants, comme j'ai dit. Pouvez-vous parler un petit peu sur ce problème?

M. Benoît Mercier: Tout à fait. Je crois que les enseignantes et les enseignants ne sont pas des juges de ligne dans la Ligue nationale de hockey pour intervenir lorsqu'il y a des bagarres ou lorsqu'il y a des malentendus au niveau des élèves. Alors, intervenir physiquement dans une altercation: les enseignantes et les enseignants pourraient subir des conséquences physiques, ce qui nous inquiète vraiment. Avec l'adoption de ce projet de loi et de la Loi sur la santé et la sécurité au travail, où les membres peuvent refuser un travail qui pourrait poser des difficultés au niveau de la santé et la

sécurité de l'employé, quelle loi prendrait préséance ici? Pour nous c'est une grande inquiétude, et si on est pour aller dans cette direction-là, il nous faut des formations précises et claires afin que tout le monde s'entende sur les mécanismes.

M. Rosario Marchese: J'ai entendu pour la première fois que M^{me} Sandals a déjà dit ou commenté qu'ils vont faire des changements. Pour moi, c'est une bonne chose. J'imagine que c'est une bonne chose pour vous aussi, non?

M. Benoît Mercier: Bien, il faudrait des définitions claires et précises : quelles sont les circonstances dans lesquelles une enseignante ou un enseignant peut intervenir sans que sa santé ou sa sécurité soit mise en péril ?

M. Rosario Marchese: Vous recommandez que le terme « raisonnablement » soit clairement défini dans les politiques. Moi, je suis d'accord avec ça aussi. Comme terme défini, qu'est-ce qu'on cherche : immédiatement, dans deux jours, dans une semaine, dans deux semaines ?

M. Benoît Mercier: Cette définition-là également doit être claire, précise et nette parce que « raisonnablement », dans du langage contractuel ou dans une loi, pourrait laisser beaucoup d'interprétations. Nous n'avons pas une formation légale dans ce que ça veut dire, les termes « raisonnable » ou « utile ». Pour nous, ce sont des préoccupations et qu'il faudra avoir des définitions claires.

M. Rosario Marchese: Merci, Benoît.

Le Président (M. Shafiq Qaadri): Madame Sandals.

Mrs. Liz Sandals: Benoît, first off, just to clarify, what I said was that there would be regulations setting out circumstances in which board staff are not required to intervene, and that would clearly include not endangering yourself. But there's actually the authority in the bill already to make those regulations, so that doesn't require amendment.

I was interested in your statement that you were concerned about the implications of performance appraisal for Bill 157. I didn't understand how you connected Bill

157 to performance appraisal.

M. Benoît Mercier: Mon collègue M. Ryan a fait état de ce qui pourrait se passer avec l'Ordre des enseignantes et des enseignants. Les conseils scolaires pourraient adopter des politiques en matière de supervision qui pourraient tenir en ligne de compte que le manque d'intervention auprès d'un enseignant dans une situation pourrait se refléter dans une évaluation de l'enseignante ou de l'enseignant. Alors, je pense qu'on est en train de brouiller les cartes. Il y a des choses qui ne sont pas nécessairement claires et précises. Il faudrait préciser certains éléments du projet de loi. Toute question de supervision, effectivement, relève de la direction d'école. Si, par exemple, il y a un enseignant désigné, a teacher in charge, à qui on remet cette responsabilité-là, nous, en tant que syndicat, prenons la position qu'un membre n'évalue pas un membre. Nous avons un code de déontologie qui prévient des situations où nous allons rapporter des situations problématiques quand c'est entre membres. Je ne sais pas si j'ai répondu à votre question.

Mrs. Liz Sandals: Well, other than to note that in the bill, the delegation to a teacher is only temporary while the principal and vice-principal are out of the school. So I think it would be highly unlikely that a board would set up policies that a teacher in charge is to run around and do performance appraisals while the vice-principal's out of the school. That would seem to be very odd.

M. Benoît Mercier: Comme vous savez, tout peut être tenu en ligne de compte lorsqu'on parle d'évaluation des enseignantes et des enseignants. Il y a dans la loi sur la supervision des enseignantes et des enseignants des

critères qui sont—

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Sandals. Maintenant la parole revient à M. Shurman.

M. Peter Shurman: Merci, monsieur le Président et monsieur Mercier. Est-ce que votre organisme peut nous offrir sa propre définition de reportage mandataire?

M. Benoît Mercier: Bien, pas nécessairement à ce moment-ci. Je crois que les enseignantes et les enseignants, lorsqu'ils sont témoins de plusieurs situations, vont en parler, que ce soit avec leurs collègues—

M. Peter Shurman: Comme témoins, ils ont une re-

sponsabilité, n'est-ce pas ?

M. Benoît Mercier: Tout à fait. Ils ont une responsabilité quand ça vient à la santé et la sécurité des gens. Nous croyons qu'il existe déjà plusieurs lois à cet effet-là, que ce soit la loi sur les abus sexuels ou que ce soit d'autres lois où les enseignants sont obligés de rapporter des situations. Nous croyons que ce projet de loi ne vient pas enlever d'autres responsabilités qu'ont les enseignantes et les enseignants, d'après nous, déjà.

M. Peter Shurman: Mais je cherche, apparemment, une définition plus exacte concernant ce que c'est que le reportage mandataire ou pas mandataire. Vous n'avez

aucune réponse à cela?

M. Benoît Mercier: Je sais que la Loi 212 stipule certaines situations en ce qui concerne la sécurité dans les écoles. Lorsque nous avons été consultés, le ministère nous a dit, « Tout effet, en ce qui concerne le reportage d'incidents, tombe dans le cadre de la Loi 212. » Alors, c'est à voir si ça va se concrétiser de cette façon-là. Nous avons quand même certaines inquiétudes.

M. Peter Shurman: Vous avez une recommandation, le numéro 5, où vous dites que les seules personnes responsables d'aviser les parents sont la direction d'école etc. Est-ce que vous recommandez que ce soit mandataire

en tous les cas?

M. Benoît Mercier: Si les enseignantes et les enseignants font les suivis auprès de la direction d'école, nous croyons que les directions d'école sont les mieux placées pour informer les parents de ce qui s'est passé. Nous croyons que ces personnes-là ont la formation légale, ont reçu des formations de par les cours qu'elles ont suivis, de faire ces suivis-là auprès des parents. Nous, les enseignantes et les enseignants, rapportons par rapport à l'évaluation, au rendement des élèves, alors à ce niveau-là je pense qu'il faut avoir une différence entre les pouvoirs que peut exercer un enseignant—

Le Président (M. Shafiq Qaadri): Merci, monsieur Shurman, et vous aussi, monsieur Mercier, pour votre soumission et témoignage aujourd'hui pour l'Association des enseignantes et des enseignants franco-ontariens.

I'd now advise members of the committee and our audience that we will be going once again into closed session, so I would respectfully ask all those who are not part of the next presentation to please leave.

I would invite, momentarily, those presenters coming forward for the closed session.

The committee continued in closed session from 1657 to 1706.

CANADIAN CHILDREN'S RIGHTS COUNCIL

The Chair (Mr. Shafiq Qaadri): Mr. Grant Wilson, please come forward. Mr. Wilson, I welcome you on behalf of the committee in your role as president of the Canadian Children's Rights Council. As you've seen, you have 15 minutes in which to make a presentation, beginning now.

Mr. Grant Wilson: Good afternoon. I'm here today to bring your attention to the inherent problems in communication between parents and/or guardians and schools, and to discuss the implementation problems of section 300.3 of Bill 157, which requires a principal to inform one parent or guardian and not all parents and/or guardians.

In the today of a 40% divorce rate, resulting in many parents not living together, and considering parents who have never lived together, the current system used by schools to communicate with parents of students is always insufficient. Educators are the first to state how a child will do better in school if both of the child's parents are involved in the child's education. In practice, they exclude parents from getting important information and often take illegal direction provided by one parent. Whether a court order for parenting time has been made by a court or not, schools don't keep basic information about both parents and systemically don't deliver information that parents need to help their children.

For example, 12 years ago the computer system used by the Peel District School Board only had data fields for a single parent. Another simple example is when a school board uses automated telephone call systems to inform a parent that his or her child didn't attend high school. They only call one household; they should be calling both parents' homes.

The delivery system for notices, report cards and such things as school calendars is flawed because they are sent home with students and schools don't have a system for distributing all this important information to both parents—and that would include all the information you're talking about in this particular bill. For example, if a child is parented alternately by the parents a week at a time, the parents will each get partial information.

I know of one school of the Limestone District School Board which, last year, had the school calendar on the Internet website for that particular school; this year, they don't have it. The parent who we specifically dealt with had had problems for many years in the past and still can't get a school calendar, let alone other information relating to the welfare of their child. Some principals have actually acted illegally by not providing report cards and other important documents to both parents, even when they have court orders for joint custody.

The Canadian Children's Rights Council has covered this issue for nearly 19 years and not much has changed. When a parent calls us, we explain that it's his or her right to get all the information about his or her child directly from the school. We explain that it is their responsibility to get the information for the purpose of being a good parent involved in their child's education. We encourage them to volunteer at their child's school, attend all school events and become a parent volunteer.

Many parents, upon separation or divorce, re-evaluate their participation in their child's life and realize that they now have responsibilities which were provided for differently when they lived with the other parent. Some parents give illegal direction to schools to stop the other parent from being a volunteer at the school or to allow the child to be with a parent during certain times and dates in contradiction of court orders. We've even followed cases in which the principal has stated to a parent volunteer that he or she isn't allowed to acknowledge their own child or speak with that child should they pass them in the school hallway. How absurd.

When we bring up such issues with directors of education and school boards, they send out directions to schools, and notices and phone calls are made for a short time, but that soon fails since the schools have no systemic way of maintaining the communication with both parents.

Making two phone calls to two households means double the work for staff at schools. Schools claim that their budgets are too limited and don't provide for the costs relating to supplying school information to both homes. Some of the costs are for the teachers' time, office labour, photocopying, postage, envelopes required to deliver teachers' notes, notices, school calendars and all information, including any kind of reports to both parents that are prepared as a result of this bill. If all the information comes to a parent from the other parent, a gatekeeper function can cause problems between the parents. Parents whose children are doing poorly in school-they didn't hand in assignments on time or are having behavioural problems at school-don't find out about them and can't take corrective action. Having two parents to deal with that means the teachers have double the number of parent-teacher interviews, that they must talk with both parents to keep them informed. Parents, when living together, may rely upon information provided by the other parent, but upon separation or divorce, that can be counterproductive. I'd be happy to discuss that further in the question session.

Schools are presented with Family Court parenting orders. These are hard to understand, they're not standardized, and in any event, schools can't possibly follow them, no matter what technology they have in every teacher's hands. There's no way to know if a court order

is authentic or if it is the most current order. We have asked directors of education and principals to address this issue, to change the law so that schools are not responsible for following any court orders other than no-parent-child contact orders, which are very infrequent.

When a parent calls a school and wishes to see his or her child's Ontario scholastic record, the OSR, school staff often make discriminatory statements that appear to be qualifying questions which discourage parents from contacting schools. They ask dumb questions like, "Is there a no-contact order prohibiting you from seeing your child?" If such an order existed, that parent may not tell the truth. The OSR would have that information, and only children subject to such orders should be red-flagged by school staff and those children subject to those orders known to the school.

Schools even tell parents that they aren't allowed to see the school records. If such an order did exist, the school would surely have been provided the order by the other parent, and it would be in the OSR. Teachers and principals are pressured so much by lobbying parents that they even withhold children from going with a parent, in contravention of a court order. Ontario courts dealing with family law issues and parenting time schedules should be required to provide parenting time orders and make separate court orders relating to all other issues in court orders.

Schools get all sorts of very personal information about personal finances and other information provided in court orders that is none of their business and that violates privacy laws, in our opinion. These court orders are public documents, but there is no need to provide information that isn't about parenting time to caregivers and teachers. Even with a current court order for parenting times, schools should not be held accountable for the implementation of them. They can't possibly keep track of exactly who that child should be with at that particular moment in time. You get court orders coming out that say, "Starting on October 5, 2003, every other weekend thereafter the child will be with this parent, and it will be with the other parent during these other times." It's impossible, no matter what technology you have, to know what the situation is at that particular moment in time. The only children you need to be concerned about are really the children who are the subject of a no-contact order because the child's been sexually abused by a parent or neglected so badly that they have been taken away from the parent.

One case that comes to mind, specifically, with the Limestone District School Board was just a few weeks ago, where a vice-president's daughter was beaten up at school and he didn't even find out about it until he saw blood on his daughter's clothing. Then he found out that it was her stepbrother that had assaulted her at school.

We've also found out that having parents involved at all levels—and that means both parents—is essential to the child's well-being. One recent case, where a child was in three different schools in this last school year and was getting straight Ds, came out because the father went

to court and pressured the school into giving him the information. He finally got all this information and discovered that the child was not being educated properly and there were some huge problems at school, including bullying and all sorts of other things that were going on. So sometimes parents hide these things from the other parent, and it's extremely important that we have the means there of communicating directly with all these parents, whether they're custodial, non-custodial or whatever.

That's an extremely important point that we need to address, and it has to be included in this bill. It should be included in the Education Act in every sense and not just talk about informing "a parent." There could be quite a number of different parents involved. There could be stepparents as well. You need to define what "parent" means. In my quick examination of the Education Act this morning on my computer, all 337 pages of it, it doesn't define the word "parent." It defines "guardian"—perhaps I'm wrong.

Are there any questions you've got regarding the parent-child relationship and the importance of that within the school?

1720

The Chair (Mr. Shafiq Qaadri): Have you finished your deputation, Mr. Wilson? Thank you. We have about two minutes per side, beginning with the PCs. Ms. Savoline.

Mrs. Joyce Savoline: Do you feel that there should be consequences in the act for non-compliance, for not reporting incidents? I know that there are exceptions that have been spoken about today. I agree that there should be mechanisms to allow for exceptions, but clearly, what I am talking about is violent sexual behaviour, which we've also heard described today, mostly in the in camera portions. Do you feel that there should be consequences to that, that there should be accountability for not seeing the process through?

Mr. Grant Wilson: There needs to be an inclusion in all of this of the primary caregiver of the child, which is both parents. Any reporting that's done should be open and transparent to the parents; it should be available to them. They should be able to look at all of this, which is part of the school records. They should be able to look at any of this. Anything that's been written down by any teacher, as far as we're concerned, is part of the school record and should be open to these parents to evaluate. It's their job to take care of the children, and it's their children first.

Mrs. Joyce Savoline: What should the consequence be for not doing that?

Mr. Grant Wilson: Well, fundamentally, you can't even get the most basic information to both parents right now—

Mrs. Joyce Savoline: No, but the consequence to the authority that does not follow through. Should there be a penalty?

The Chair (Mr. Shafiq Qaadri): I'll need to intervene there, Ms. Savoline, Mr. Marchese.

Mr. Rosario Marchese: Grant, I just wanted to agree with much of what you said, because I think there should be an obligation, a legal obligation, for the school community to connect with both parents, in spite of whatever budgetary problems there are and shortages in staffing and secretaries and so on. I think the two parents should be notified, unless there is a particular problem where there is no parental contact or some serious violation—one parent against the other or against the child and so on. But where that's not apparent, I think both parents should be contacted, and I think that we need to address that. I don't know whether Ms. Sandals has thought about this, but I think we need to deal with that.

Mr. Grant Wilson: And there shouldn't be a funnelling of information from one parent, because when you send home forms and say, "We have to update the information," you only get that from one parent, and in some circumstances there has to be a change even of residency or temporary assistance by the other parent to overcome some of these obstacles, whether bullying on the way to school or whatever it may be.

Mr. Rosario Marchese: I agree.

Mr. Grant Wilson: The other parent can step in to help there, and sometimes there's hiding by one parent from the other because they don't want to look bad or they're not supervising the child properly, and there might be financial consequences.

Mr. Rosario Marchese: I agree, Grant.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. Ms. Sandals.

Mrs. Liz Sandals: In your experience, where parents are not getting all of the information, is that consistent with the court order, or is there a court order that says that both parents will have co-custody or whatever?

Mr. Grant Wilson: First of all, my understanding is that with regards to Ontario—and I'm trying to keep track of many different acts in different provinces and territories—under the Education Act, it doesn't matter whether you're a custodial or a non-custodial parent. In fact, quite often, no order is made at all: You are a custodial parent. The parents are separated and it's never been to court, so you are a custodial parent unless a court takes—

Mrs. Liz Sandals: Unless it says you're not.

Mr. Grant Wilson: And even then—and we should have equal, shared parenting, which is another question. We're 20 years behind the times in our laws. That's why I talk about parenting time orders, which is what they have in Australia. They don't have visitation down there. They don't have the word "custody" in their family law.

Mr. Rosario Marchese: It depends on the circumstances.

Mr. Grant Wilson: Well, they have equal, shared parenting, and they also have—

Interjection.

Mr. Grant Wilson: No, they don't have the word "custody" in their family laws. Australia's Family Law Act, 1975, and the amendments to it do not use the word "custody." In fact, if you want to get a Canadian version

of that, you have to have it converted, because they have parenting time orders—a parenting order is made.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals, and thanks to you, Mr. Wilson, for your deputation on behalf of the Canadian Children's Rights Council.

ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter, David Walpole, a director at the Ontario Public School Boards' Association. Mr. Walpole, welcome. You've seen the protocol. You have 15 minutes in which to make your presentation. I invite you to begin now.

Mr. David Walpole: Thank you, Chair. Good afternoon, committee. We did make a written submission. I don't think I will read the whole thing verbatim to you, but I'll try and hit the highlights.

The Ontario Public School Boards' Association represents the interests of 33 public school boards from all across Ontario and 1.2 million elementary and secondary school students. We've always been strong advocates for ensuring that the schools of Ontario are safe places for our students to learn and our staff to work, and it's our belief that the key to violence-free schools and the reduction of violence in society lies in long-term preventative initiatives. Thus, we support the concept of mandatory intervention and reporting, which are the two key elements.

We've been involved in this for some time. In December 2005, we wrote to MPP Liz Sandals, chair of the safe schools action team then and now. We stated that "While the focus of this submission has been on the Safe Schools Act as it relates to students who have been suspended or expelled for their actions, it is important not to ignore our commitment to support victims of violence and their families. Assistance from school staff, board specialists and appropriate referrals to community agencies is vital to the healing of students who have been victimized." At that time, OPSBA was involved with other education partners in developing a working committee to address violence, especially violence in the media. That committee continues today, and it's done some very, very good work. I'm sure you're aware of that.

On the issue of interventions, we support the active intervention and reporting requirements prescribed in this bill. Reporting incidents after the fact is not sufficient. There needs to be a greater emphasis on prevention and on intervention. We know that intervening during or, in some cases, before an incident occurs is a preferable way to deal with inappropriate behaviour. An appropriate intervention will usually de-escalate a situation and lessen the chances of undesirable outcomes.

We draw the standing committee's attention to a successful model of early intervention in place in a school board which has had some mention previously, and that's the Limestone District School Board. It's called the com-

munity threat assessment protocol. It involves collaboration among school boards, police, staff from child protection, youth justice, children's mental health, local health units, and child and youth services. Strategies are based on the work of Kevin Cameron, who is the founder of the Canadian Centre for Threat Assessment and Trauma Response. The school board has a behaviour action team that is convened within 24 to 48 hours of a need being identified and will call on support from any of the partners identified above. It's reported that parents feel that what was once solely a disciplinary matter is now looking at the interests of both the student who caused the incident and the victim.

Incidents which cause harm to students and negatively affect the climate of the school can happen before and after school and both within and without the school. So it's important that staff and others who may be in the school understand that vigilance and intervention are shared responsibilities of all adults in the school. Ignoring unacceptable behaviour, either consciously or unconsciously, not only results in that incident being overlooked but also sends the tacit message to students that unacceptable behaviour is condoned. That's a very difficult message to change once it has been sent out.

We believe it's important, in section 300.4, to be clear in the requirement that all staff be expected to intervene in circumstances where student behaviour is likely to be harmful to others and have a negative impact on school climate. We believe a clear statement of expectations and an understanding of what is unacceptable behaviour, when combined with vigilance and enforcement by staff and school administration, will increase student understanding that their unacceptable behaviours will not be tolerated.

On reporting to principals, we basically say that we believe it should happen. In addition to being required to intervene, staff members should be required to be individually responsible for reporting serious incidents directly to the principal in a timely fashion. It should include both the behaviour of the student and the intervention taken by the staff member.

I'd like to pause on reporting to parents for a moment, because we think it's important. We support reporting of inappropriate behaviours in schools, especially those which bring harm to students from others, to third parties, including parents, social service agencies and the police. Every school board has a policy and procedures in place which identify when a parent should be notified by a principal of an incident involving a son or daughter, and there are serious consequences for not following through with that for principals. When a student is injured at school or on an activity, there's no issue in notifying the parents of the issue and the steps taken to provide attention and care. However, when the harm is caused by another, we run into the issues of privacy, and those have been a source of frustration for many parents.

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OPSBA supports the intent and the language of 300.3(3) as presently drafted. Relying on their pro-

fessional judgment and expertise, principals must have the discretion to decide if and when to make a report to a parent. However, it is also incumbent on the principal to document clearly the reasons why the decision was made to withhold reporting to the parent or guardian.

We concur with OPC on the definition of harm, which needs to be quite clear, in that harm can come both in physical injuries requiring medical attention and those where severe or significant emotional impacts have occurred from bullying.

I would stop there and answer questions.

The Chair (Mr. Shafiq Qaadri): About two and a half minutes per side, beginning with Mr. Marchese.

Mr. Rosario Marchese: David, I understand the point you make about intervention and that that's a shared responsibility by everyone. The problem is the word "intervention," the duty to intervene, doesn't explain what kind of intervention we're talking about. You could see where some racial remarks or inappropriate terminologies used against gays and lesbians, for example—a teacher can intervene in some of those areas. But where there is physical involvement in a serious situation between two students, that could cause harm to the teacher. You probably would agree with that. Do you think we should define what kind of intervention? I'm assuming that's what Liz Sandals was talking about, where they will define intervention in regulation—and I'm assuming we'll be happy with the final result. I'm assuming you agree that we need to define what that kind of intervention means, right?

Mr. David Walpole: I think teachers understand what intervention means. I think that where a teacher would be clearly at risk—and I taught high school for many years. If there was a ruckus in the hall, the little female teacher across the hall would not step in between the two big boys, but you would certainly make it known to others that an intervention was required, and that would happen. So I think we need to talk about the ability to have one and then talk about those things which would be inappropriate—

Mr. Rosario Marchese: David, the duty to intervene is not qualified. You're describing a situation where you might get involved or might not, but when you have a duty to intervene it's a problem in terms of what discretion you use in that intervention. Anyway, I wanted to raise that.

You say there are serious consequences for a principal if the procedures are ignored. We heard three parents today who talked about serious sexual violence, sexual abuse, against their children, and it was inadequately dealt with by the trustees, by the board, by the principals. So it appears from the language that there are serious implications and consequences if you don't deal with certain issues, but in some of the matters that have been described to us, there haven't been those consequences—except for the incredible damages done to the family and those kids. How would you deal with that?

Mr. David Walpole: Not having been-

The Chair (Mr. Shafiq Qaadri): With apologies, we'll have to intervene there. Ms. Sandals.

Mrs. Liz Sandals: You've got lots of interesting ideas here, but I wanted to check a few.

Talking about reporting to parents, you've made a suggestion that it would be reasonable that that be documented when it's not, so that there would be some written documentation as to why, and also that it would be appropriate for a principal, in circumstances, to consult with somebody else. OPC actually went so far as suggesting that we amend to actually include the requirement that a principal who isn't going to report to parents consult with somebody like the superintendent. Would the boards be amenable to having a requirement that we include some responsibility to consult with somebody else if you're not going to report to the parents?

Mr. David Walpole: I think if I were writing the procedures manual, I would make that a clear suggestion: that the expectation is that you will report to parents, and if you're not going to do so, then you have to clearly state

the reasons why you did not.

Mrs. Liz Sandals: So that's something that would go in the regs or the policy guidelines?

Mr. David Walpole: I would think so.

Mrs. Liz Sandals: Thank you.

The Chair (Mr. Shafiq Qaadri): To Mr. Shurman.

Mr. Peter Shurman: To continue with my colleague's line of questioning, we've heard from parents all afternoon, in camera, who were literally hung out to dry with their kids in the wake of incidents involving their kids—reporting breakdowns on the parts of principals. How can you justify any discretion whatsoever? Are parents, or are they not, the final arbiters of the welfare of their children?

Mr. David Walpole: Well, Mr. Shurman, I don't think we've heard from all the parents. I think we've heard from a few. Yes, there will be incidents where parents have not had what they see as a satisfactory process, and I'm very sorry when that happens, but I think that the great majority of incidents are handled quite professionally, with the discretion of principals being the driver for that to happen. I think if you take that away, we get back into that mandatory kind of process that the old Safe Schools Act was hampered by, and I don't think we want to go there.

Mr. Peter Shurman: But we use the term "mandatory reporting" in this bill, and it'll become law, and mandatory reporting means one thing to one set of people and one thing to another. The mandatory reporting here, in my view, doesn't go far enough. You seem to disagree

with that. What's mandatory reporting to you?

Mr. David Walpole: I think it's quite clear that if there is an incident, the parents are going to be notified of the incident and the consequences that occurred to the student who was involved in victimizing their son or daughter. I think that's a good thing. With respect to the privacy issues that exist, they're still there, so we have to respect that.

In terms of the process, however, I do think that the principal has to have discretion. We don't pay them \$100,000 a year just to bind them by policies that give

them no licence and no latitude.

Mr. Peter Shurman: Do you believe in full documentation, on tracking of all incidents at the level of the principal?

Mr. David Walpole: I believe that incidents of serious violence should be documented quite clearly, yes.

Mr. Peter Shurman: But who is the arbiter of what is serious violence?

Mr. David Walpole: The principal would be, but I think we clearly understand what serious violence would look like. It isn't a great mystery that if there is a serious physical incident or sexual harassment incident, that's what it looks like.

Mr. Peter Shurman: Thank you.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Walpole, for your deputation on behalf of the Ontario Public School Boards' Association.

ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION

The Chair (Mr. Shafiq Qaadri): I would now invite, on behalf of the Ontario Secondary School Teachers' Federation, Mr. Coran and Mr. Leckie and colleagues and entourage. You've seen the protocol. You have 15 minutes in which to begin, and I invite you to begin now.

Mr. Ken Coran: I am Ken Coran. I'm the president of the Ontario Secondary School Teachers' Federation. We do represent more than just teachers. We also represent support staff workers in the elementary panel, French and Catholic panel, as well as the public panel.

When we were aware of the legislation and the standing committee, we did send out an e-mail to all of our bargaining unit presidents, of which there are 140 across the province, and we did solicit information from those 140 people as to what some of their concerns were with the legislation. So what you will hear today and what you will read on Wednesday with the written submission speaks volumes for 60,000 workers across the province.

One of the things we wanted to highlight is that safety for OSSTF members and the students has been a priority for quite some time. We believe very strongly in preventive measures with regard to safety. In fact, we have developed a lot of resource materials and workshops that deal with safety—workshops that deal with students at risk, with bullying, with cyber-bullying, with crisis awareness. Our intent all the way has been to make sure that our members are trained to deal with situations. So we have not been sitting back waiting for legislation. We have been very proactive with regard to safety.

Safety can be defined so many different ways. It doesn't matter what party is in power. Various parties have put forward legislation that they firmly believed in, and it was the hope of that government that the legislation would solve problems. I look over to our colleagues on the right over here—Bill 81, which was way back in 2000, the Safe Schools Act, was put forward because they firmly believed that how it was defined then would solve the problems. It was well-intentioned but it didn't work. There were shortfalls. The whole mandatory

aspect of suspensions and expulsions just didn't work. That was the whole zero tolerance.

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Then another government came into power and they looked at school safety again, and Liz Sandals was one of the leaders in that one. We had the safe schools action team which, first of all, looked at bullying. I think that was in 2004. Subsequent to that, in 2005, the next project was very much to re-look at the Safe Schools Act. They put together a team of experts from all walks of life to look at the Safe Schools Act and they did come forward with those recommendations, which we now know are Bill 212. This, obviously, is a subsequent move to try to improve how we deal with safety in schools.

I think all of us in this room are trying to do what's best for students. What we're trying to do through this process is very much show the panel that we are willing to help with how we can achieve improved safety in the schools. The one overriding comment we do have is that we don't want to rush this through. We've got a lot of professionals, a lot of people who care, who have a lot of expertise, and we're saying, let's just slow down a bit. We realize that some of the ideas are well-intentioned but we have to fine-tune them. Let's slow down. Let's get some suggestions. Let's work with education stakeholders and make sure that what is finally produced will in fact be what is in the best interest and what's easily understood, so that all the roles and responsibilities are clearly defined.

I'll turn it over. I've got my two partners here. Dale Leckie is our director of protective services and Lori Foote is our director of communications, political action, who is in fact responsible for developing a lot of the workshops that deal with school safety.

Mr. Dale Leckie: I will go through a few of the points that we do have concerns about. You know it's built in four sections.

The first section is having the delegation of responsibilities. We believe that should be a very rare event, and the overriding need is to have the administrator in the school. We think an overriding safety message is sent to staff and students when an administrator is in the school and visibly leading the safety. If there is a need—certainly in some small schools—a rare event that no administrators are available, then it should be delegated in writing and for the duration that it needs to be. We certainly are concerned with any—and we think the bill reads currently that blanket delegations can't be done, or that there can't be any permanent delegation of a portion of the responsibilities.

Also, the concern that we have from our members, in some cases, is that reporting is done and there is no return of an outcome of the reporting to that person. We expect that there is going to be some trail of the currents, the result of the reporting and a verification that a report was made.

In 300.3, an overriding concern is the need for training in many of these pieces, and certainly in 300.3 and 300.4 there are a lot of descriptors that are very subjective. The

concerns raised by the parties before us certainly lend credence to ours, that in 300.3 this should be a portion that is not delegated, that a principal or senior official should be the one doing the reporting to the parents and that should not be part of a delegated duty to anyone else.

Also in 300.4, in part of the intervention process, it is contingent on many different thresholds—one board could have a threshold, another board could have a different threshold on the responsibilities of intervention. We think the term "intervention" is an inappropriate term to use, but we also think that this is really a matter for policy and guidelines. It isn't a matter for language inside a bill. We think 300.4 should be removed from the bill and be part of a policy and guideline document.

Just some general concerns:

Liability: The liability that our members have for reporting or not reporting is a real concern.

Reprisals: We have many education workers who have many duties. An education assistant is responsible for a high-needs student. Should they leave their charge of the high-needs student to intervene or to report? What is the hierarchy of their responsibility? Should a teacher leave their classroom to intervene in the hallway and leave the classroom unattended, which is not allowed by the act—that type of thing?

Training: We think the gap, really, if there is a gap, is in the training of education staff, not in the need for legislation.

Protection: Is there ongoing protection for a reporting person?

Exemptions: There is a future list of exceptions. Needing to know that ahead of time is going to be important in the development of the bill.

Identification purposes: Two kids were fighting and they had brown shirts and blue jeans. How is that worker going to be able to identify those kids in order to effectively report the incident without having to take them with them?

Is there any other interaction between other bills with the appropriate legislation, like the safety legislation?

Ms. Lori Foote: Thank you, Dale.

When you look at our concluding remarks, you'll have a summary of the recommendations. But as a teacher of many years who has been responsible, as Ken said, for developing many of the workshops that we've taken across the province, let me tell you that as a teacher my first response was always to protect the students. I've been involved, unfortunately, in many melees in my career where I was physically put at threat, but my first response was to protect the students who were with me, and I will say that with educational workers, their first response is to do that as well. Without the legislation, we are doing that.

Sometimes where it falls down is where the reporting occurs and we do not have the reporting back to us on what is occurring at the higher levels. So while we may report it to administration, that's where sometimes we run into those blocks, and we don't have any information back to us and we don't know what has happened with

the parents, with the guardian or anyone else who might be an interested party.

We have several collective agreement provisions across the province that limit how we can use teachers in charge and what their duties are in terms of disciplining students and reporting. We think it's very important that Bill 157 not override any of those collective agreement provisions. We've all been signing authorities to those together across the province, so we don't think a bill should come in and override those and we think it's very important for the bill to take its time, go through the process of a full and extensive consultation with all of the stakeholders and ensure that we iron out some of these problems that are clearly identified here today at the hearing before the bill reaches final reading and becomes law.

We really believe that we're all trying to work together for the sake of students, but the only way we can do that is to ensure that that proper consultation takes place, that the training is there, that we all have clearly identified roles and that we are very clear on the definitions of any actions that must be taken by any authority in the school environment.

Finally, as you can tell from my passion for this, OSSTF truly does believe that a healthy and safe work environment is a healthy and safe learning environment. The two cannot exist in isolation. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you. About 90 seconds per side. Mrs. Sandals.

Mrs. Liz Sandals: Just to follow up on the delegation issue, this is one place where the legislation allows for policies and guidelines to be established by the ministry, so clearly there will be further consultation on that. But just to confirm, when you're talking about delegation to the teacher, you would support the concept that that's not permanent—that that's very much time-limited. I think one of the other federations made the comment that it shouldn't include discipline, that the responsibility for discipline would be staying with principals and vice-principals, and by extension, I suspect your comments were a not requiring reporting to be delegated to the teacher in charge. Have I correctly heard your comments?

Mr. Ken Coran: Yes, you did. There are so many different groups talking about this right now. With the provincial framework agreements that were established, we have something call the TTAC and the SWAG, which are two work groups. Part of these discussions is being conducted in that forum as well, which shows why we want to consult and make sure we don't override collective agreements and we carry forward in a pattern that will be successful, as opposed to not successful.

Mrs. Liz Sandals: Thank you.

Mr. Dale Leckie: Ideally, there would be no need for delegation.

Mrs. Liz Sandals: However, if not a large secondary issue, it is certainly a small elementary issue.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals. Ms. Savoline.

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Mrs. Joyce Savoline: I know that when these issues arise, it's an emotional time for everybody, so I can understand the nervousness on the part of administrators, and even teachers, who wonder, "What's going to happen? Who's going to blame me for something?" Usually, in these situations, human nature dictates that blame wants to be laid.

But let's be clear. If there is a process and that process is not followed, and the sole responsibility for knowing anything that happened rests with the principal, who then adjudicates whether the principal has done their job or not? How does it move up that ladder through the hierarchy, and where are the consequences for somebody who does not follow the rules?

Mr. Ken Coran: Well, one of the things we suggested was obviously this paper trail. Once the report is made, we'd like to see what the outcome of the reporting is. From that point on, it becomes more of an administrative responsibility. We would expect that the superintendents would follow through on that, or else, if nothing has happened—every situation is a teachable moment. If something happens in the classroom or in the hallway, and there's an action that occurs and is reported and nothing is resolved from it, then what has been gained? We want to set the tone of the school so that things happen as a consequence of actions.

Mrs. Joyce Savoline: Ken, I think I'm talking about serious, violent acts.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Savoline, Mr. Marchese.

Mr. Rosario Marchese: Oh, I have to go fast.

Mrs. Joyce Savoline: It's not happening, Ken. Mr. Rosario Marchese: Ken, I was going to put you on the spot, but I'm not going to do that.

Mr. Ken Coran: Oh, come on.

Mr. Rosario Marchese: No, no. Liz Sandals, as you know, is part of that group, the safe schools action team, and she has 78 recommendations, and there are only two. I know you said we have to go slow, but I want to be able to retire and see at least 10 or 12 of those recommendations.

Mrs. Liz Sandals: You'll get more, I guarantee it.

Mr. Rosario Marchese: At this rate, I'm just going to age, get grey hair, and I'm going to lose it all.

The Chair (Mr. Shafiq Qaadri): Is that an announcement, Mr. Marchese?

Mr. Rosario Marchese: The second point, about the duty—I just wanted to make this point, because he's going to cut me off. The duty to intervene is in the bill. You have no option; you've got no choice. It doesn't say, "Oh, it's discretionary." It's a duty to intervene. That's in the bill.

The parliamentary assistant might say, "Oh, but we'll fix that in regulation," but I don't know whether you can fix a duty to intervene in law. I don't know, Dale, whether you have a comment on that.

Mr. Dale Leckie: Well, I mean even using the term "intervene" is a problem for us. I think that sends a

different message than the training would suggest. But that's why we have asked that that portion be removed from the bill itself—

Mr. Rosario Marchese: I agree with that, actually.

Mr. Dale Leckie: —and that guidelines and policy govern that very flexible, grey, subjective area.

Mr. Rosario Marchese: I agree with that. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese, and thanks to you, Mr. Coran, Mr. Leckie and Ms. Foote, for your deputation on behalf of the OSSTF.

TORONTO CATHOLIC DISTRICT SCHOOL BOARD

ONTARIO CATHOLIC SUPERVISORY OFFICERS' ASSOCIATION

The Chair (Mr. Shafiq Qaadri): We have our next presenter, Mr. Paul Crawford, superintendent of education at the Toronto Catholic District School Board. Welcome, Mr. Crawford. You're more than familiar with the process here. I invite you to begin now.

Mr. Paul Crawford: Thank you. I'm just going to preface by saying I'll have my full written comments to

you by Wednesday.

What I want to focus on specifically are elements of the bill that are of concern to us from a superintendent and management point of view, in terms of writing the policies that would happen at the board. I'm not going to comment on any of the things that have happened before, because I think you've heard the comments.

Specifically, section 300.2, where it "does not require an employee to report to a principal" if they know that the report has been made and they have no reason to believe that their report will provide their principal with useful information: Please take that out, because you'd have to know the mind of the principal to know whether it was going to be useful to the principal or not. As a principal in four different schools before I became a superintendent, I know that multiple reports on the same incident are frighteningly different sometimes, so I don't want some person, a staff member, to presuppose that just because they heard that somebody else told the principal about it, they would give the same point of view. I would respectfully ask that that be omitted from the bill.

In terms of subsection 300.3(3), "A principal shall not notify a parent or guardian ... if in the opinion of the principal doing so would put" the student at risk: In the regulation, please make specific reference to police protocols and children's aid protocols, which are the hangers, if you will. When a principal doesn't do this, they need to have some justification. In the regulations, those are the two areas that allow a principal, under the current status of things, not to report. It would be very helpful if you had that specific reference in the regulations, because it would give everybody the parameters they need in order to understand how to actuate that.

In regard to the next, I agree with earlier statements that have been made in regard to harm, because "harm" is

really in the eye of the victim. Clause (4)(c), which talks about "the nature of any disciplinary measures," is in direct conflict with subsection (5) if you take a victim's point of view. Many parents who come to us—if things to come to my level, as has been earlier referenced—when they're not happy with what happens with the principal, it comes into the superintendent's domain. They will clearly tell you that the nature of any disciplinary measures referred to in (4)(c)—they specifically want to know what happened and to whom. So (4) and (5) are in conflict, in the eye of the victim, in terms of how it moves forward.

In terms of section 300.4, in reference to all of the previous speakers and some of the people who represented various other associations and unions, the idea of intervention, as broad as it is—and in reference also to some of the comments made—you need language in the regulation like "a firm, judicious parent"—something that used to be in the Education Act and allowed people to give some idea of how to look at it, because it is very judgmental in terms of what intervention could be. There will be lots of trepidation about going into that zone for the first time, in many people's eyes.

If you reference back to children's aid legislation, which changed the requirement of a report from a principal to the individual receiving the information, this is analogous to that, so we've gone through a similar sort of thing and we're still working our way through that. Even though that has been in the system for a few years, there are still many instances where principals are being asked by staff members, "Please report something. This is what a child told me," and the principals are having to tell the staff member to report and even some of the principals are trying to help them out by reporting it themselves. We've seen analogous sorts of legislation, so please keep that in mind.

One of the biggest worries I have is on subsection 301(5.1), the delegation—can it be refused? I don't want to have a principal in a school running around trying to get someone to take charge because they have to go out for something that's legitimate board business. In the regulation, it has to clearly state that it cannot be refused. If the principal has faith in that person's ability to handle the delegation, that should be good enough.

I agree with the idea of specific length of time and to

keep it time-bound.

Subsection (5.2) under that section: Please revise the provincial code of conduct to include these sections because, as a board, all our policies flow from our code of conduct, which flows from the provincial code of conduct, so that as a necessity you must revise the provincial code of conduct either with legislation as a companion piece so that we do not wind up with anything that's going to involve people's actions that's not referred to in the code of conduct. That's absolutely necessary.

Subsection (5.3): Cafeteria staff, people who come in and work on our boilers, all those people who are outside of this will now be inside of this legislation. The amount of work we're going to have to do with those people is immense, plus all the employers who work in our schools, because, in our particular board, we do not own the cafeteria workers, if you will. We contract it all out as a cost-saving basis, and there are many other Catholic boards I know that do that, so that's a concern. The amount of time it's going to take to in-service this is going to be enormous.

I agree with the regulation on section 300.2. Please make sure that you have a protocol of acceptance of delegation in your regulations so that boards can just follow it and you've hammered out all the issues with the various unions before it comes to the boards so we're not doing a one-off with all our unions; in other words, you've taken care of all of the various incidents and you

can deal with it accordingly.

In regard to the act coming into force on February 1, 2010, that only happens if all of this is in the hands of the school board by June 15. For anything beyond June 15, add a month to the other end, minimum. To give you a "for instance," in our board regulation, before we modify our code of conduct, we have to take it to every union group. We have a committee to do that; that takes time. Consultation back and forth takes time. The training takes time. So for everything beyond June 15, start adding months to February at the other end. Our experience from the last time when we had legislation that came in June that required us to have changes by February 1 was that we just made it to the January board meetings and it was just-in-time delivery, and that was the same sort of feel to it. We had to do some consultation and we had to go out.

So those are my comments today. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Crawford. About, I guess, two and a half minutes per side, beginning with the PCs. Ms. Savoline.

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Mrs. Joyce Savoline: Does your board track—I'm going to use the word "violent"—student-on-student abuse?

Mr. Paul Crawford: We have a progressive discipline tracking form that's built in as an electronic base, if you will; it's web-based. If a report was made to an administrator or even by a teacher, we have the ability to have that tracked, yes.

Mrs. Joyce Savoline: If the report that was made was not properly handled, does your board have consequences in place for those who did not handle it properly?

Mr. Paul Crawford: If something comes to me as a superintendent—say, a parent said, "Something happened to my child, and nothing happened"—that would come in as a parent complaint. HM30 is our policy that we use to deal with that; HM19 is a related one. There is a whole policy that sets out what we would do and how we would deal with it. It's fairly structured and it deals with issues, whether it's a complaint about any level of staff member below the superintendent.

Mrs. Joyce Savoline: Have principals in your board suffered consequences for not reporting these violent abuses?

Mr. Paul Crawford: There have been situations where superintendents have had meetings with those parents and the principals to get a reconciliation coming out of a misunderstanding out of situations. Have people been fired? Not to my knowledge; not in my superintendency, but I wouldn't know the full spectrum. We have worked through situations where people felt that there were not consequences, if you will. Most of the situations involved parents of some exceptionally young children in grades 1 and 2 who weren't happy that the child who hurt their child wasn't given more consequences than was felt reasonable by the principal. It usually involves a lot of discussion over what is age-appropriate in the eye of the victim and the victim's parents, which predominates these days. That is an enormous issue that we have to deal with in lots of circumstances, getting some idea of what's age-appropriate and what's balanced.

Mrs. Joyce Savoline: Just a quick yes or no: Do you agree that the principal should document their actions, whether they proceed or they decide not to proceed fur-

ther after a report?

Mr. Paul Crawford: I agree.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Marchese.

Mr. Rosario Marchese: Paul, a few quick questions. With respect to delegation, it should not be refused. You designate me as a teacher and I can't refuse is what you're saying?

Mr. Paul Crawford: Yes, the situation we don't want

is a principal having to run around—

Mr. Rosario Marchese: I understood that. But you designate a teacher, and that teacher cannot refuse? Is that what you're saying?

Mr. Paul Crawford: We would like the regulation to

be very specific.

Mr. Rosario Marchese: That's very interesting.

Duty to intervene: I understand that that should be defined in regulation, but do you agree that that language should be in the bill?

Mr. Paul Crawford: If the intention of the bill is to be as broad as I believe it is, then the answer is yes.

Mr. Rosario Marchese: The language in the bill is not very clear. You have a duty as a teacher to intervene.

Mr. Paul Crawford: That's why I asked that it be defined. That was one of my comments: Nail it down.

Mr. Rosario Marchese: The third point: I found it very troubling; three parents came today to talk about incidents of serious sexual violations against their children. It was obvious, there was evidence, and it was dealt with badly by the principal. The trustees evidently didn't get involved, or they said they did but didn't. The boards failed them miserably. What do you say to that?

Mr. Paul Crawford: My heart goes out to those people. Hopefully, if we were involved in situations, we would take care of it. We like to believe that people out there are competent, and they're doing the things they need to do to keep shildren seef.

need to do to keep children safe.

Mr. Rosario Marchese: Yeah, you would like to think. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese, Ms. Sandals.

Mrs. Liz Sandals: Just a couple of questions about the issue of delegation: I take it from what you're saying, then, that the language around telling staff that they may not need to report if they know somebody else has reported and they don't have anything useful to add, you don't find that particularly helpful. You would rather have everybody report and the principal will—

Mr. Paul Crawford: If you know something, tell. Let the sift happen at the decision point, not at the infor-

mation level.

Mrs. Liz Sandals: We've had a number of people today suggesting that people would need to put all this reporting in writing. Do you want these reports from staff members in writing, or is verbal adequate?

Mr. Paul Crawford: If there's an incident happening right now, and I don't have a pen with me, I'd better tell someone about it quickly if it involves the health and care and safety of a child. I wouldn't expect it necessarily to be written; it doesn't have to be.

Mrs. Liz Sandals: So as a principal, which you've been in your past life, you would prefer to get lots of

verbal reports and that allows you to sort-

Mr. Paul Crawford: If it's an immediate action. I've had situations where someone could tell me there was going to be a fight happening in four seconds outside the door. I'd better get out there. I don't need a written report; I need to get out there fast.

Mr. Rosario Marchese: Who said what and who do

you believe?

Mrs. Liz Sandals: I think what you're saying is, "Give me lots of information quickly, and then as the principal, I can sort through the information at will."

Mr. Paul Crawford: It would eventually turn into a written report. But if the immediate situation presents itself in a way that you need to protect the interests and the safety of the child, you've got to act immediately based upon whatever you have.

Mrs. Liz Sandals: Thank you.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Crawford, for the deputation on behalf of the Catholic district school board.

BOOST CHILD ABUSE PREVENTION AND INTERVENTION

The Chair (Mr. Shafiq Qaadri): I'd now invite Ms. Karyn Kennedy of Boost Child Abuse Prevention and Intervention. Welcome. We'll have our clerk distribute that for you. I would invite you to please be seated. Please begin now.

Ms. Karyn Kennedy: I'd like to commend the Minister of Education on taking further action to protect chil-

dren and youth in schools.

Boost, formerly Toronto Child Abuse Centre, is pleased to have the opportunity to present a submission on this bill. We've worked in Toronto and surrounding areas for the past 27 years and coordinate a community

response to child abuse. We offer programs and services in the areas of prevention and education, assessment and treatment, and court preparation. We're a not-for-profit charity, and we have a 20-plus-year history of working with the Toronto District School Board and Toronto Catholic District School Board to prevent abuse and violence in children's lives.

We believe that all children and youth have a right to grow up in a safe, healthy and nurturing environment. We're dedicated to the prevention of child abuse and violence through education and awareness and to collaborating with our community partners to provide services to children, youth and their families.

The safety of children and youth in schools is of great importance to Boost, as it is to all of you. We recognize that there are significant concerns on the part of government, as well as the broader community, about the level of violence and aggression in our children's schools and that this bill is an attempt to increase the safety of children and youth while in school.

The bill is a very good beginning, but further work still needs to be done so that it's more comprehensive and includes both prevention and intervention components. I would define intervention differently than the former speakers have defined it. I'm really talking about the kind of support that children, both victims of violence and perpetrators of violence, receive once reports have been made.

By ensuring that teachers and other school personnel are obligated to report, hopefully there will be further opportunities for principals to take action to keep children and youth safe.

We respectfully offer recommendations for two areas addressed in the bill. These recommendations concern the need for prevention and for further support for children and youth.

The numbers of children and youth with aggressive behaviour in schools has increased, with bullying now being identified by educators and parents as a very serious problem in the lives of children and youth.

Internationally recognized expert David Finkelhor emphasized the extent of the problem of child victimization in his recent book:

"Children are arguably the most criminally victimized

people in society....

"In reality, most studies now confirm that children face frequencies of assaultive violence far above the levels that most adults encounter, although this reality is not widely recognized."

A recent report entitled, The Road to Health, which was commissioned by the Toronto District School Board found that there are a significant number of children and youth in schools across Toronto who are demonstrating sexually acting-out behaviour that spans a continuum from at-risk to severely abusive behaviours toward others.

In my own agency, we receive about three calls a month from schools across Toronto and the GTA wanting to know what they should do in cases where they have eight-year-olds who are involved with what they're perceiving as sexually abusive behaviour toward each other.

There's strong agreement among community agencies that prevention needs to be a key component in any strategy to address this type of behaviour—sexually acting-out behaviour—bullying or any other type of aggression by children and youth. There needs to be a comprehensive approach that begins with broad-based prevention activities for all children and youth.

Training for teachers, principals and other school personnel is critical and must be seen as a priority. The speaker before me talked about the difficulty that would be involved in training cafeteria staff. In my experience, cafeteria staff as well as other school personnel are often the ones children talk to when they have a problem. I think even the bus drivers need to be trained. The training really does need to be comprehensive, and everybody who works with children in schools needs to understand that the kinds of situations we're talking about are not just physical. There's a lot of verbal bullying and harassment that goes on with children in our schools, and I would hope that this would be an opportunity to address that as well.

Boost offers primary prevention programs that are delivered in classrooms, beginning in grade 1, in an effort to teach children skills to develop pro-social, healthy relationships that ultimately will reduce and, hopefully, eliminate bullying and violence in schools.

We've worked closely with the TDSB and the TCDSB for many years to develop and implement these programs that are based on increasing children's self-esteem, communication skills and respect for one another. We're now beginning to work with school boards outside of Toronto, including the St. Clair Catholic school board in Wallaceburg, the Ottawa Catholic District School Board and, more recently, the Dufferin-Peel Catholic school board, to implement these programs.

We've had discussions with the Ministry of Education staff and with the safe schools action team in an effort to request that there be mandated primary prevention programs in schools across Ontario. We believe that this would be a significant step forward in preventing the violence and aggression that exists in our children's schools.

The act to amend the Education Act states, "300.2(1) An employee of a board who becomes aware that a pupil of a school of the board may have engaged in an activity described in subsection 306(1) or 310(1) shall, as soon as reasonably possible, report to the principal of the school about the matter."

What is not clear to me in the bill is what action the principal or delegate would take once a report has been made, except to consider suspension or expulsion. Often, these situations are very complex, and the children or youth involved, both victims and the perpetrators, have needs that require more in-depth intervention. In some cases, suspension may even put the child at further risk.

It would be very helpful to require that in cases where the activity involves interpersonal violence of a physical or sexual nature, the principal or delegate must consult with a child protection agency. It's not uncommon for children who engage in aggressive or violent behaviour to have been victims of abuse or violence themselves, and to have even had previous involvement with a child protection agency. By consulting with a CAS, the needs of the child can be more fully considered and steps taken to offer appropriate support and intervention.

Further to this point, amendments to the mandates of child protection agencies need to be reviewed to ensure that they are providing a consistent response to situations involving child-on-child violence. It has been our experience at Boost that some child protection agencies see child-on-child assaults as situations that put children at risk and therefore require their involvement, while other CASs don't feel that they have any responsibility to be involved unless the behaviour is perpetrated by someone in a position of trust or authority. It is essential that schools receive a consistent response from child welfare agencies to address these situations where children are at risk.

In closing, I want to reiterate my support for the steps that the government is taking to protect children and youth in schools, and would encourage the Minister of Education to see this as the beginning of a much more comprehensive strategy that would include prevention and supportive intervention components to keep our children safe. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Kennedy. We have about two and a half minutes per side, beginning with Mr. Marchese.

Mr. Rosario Marchese: Thank you, Karyn. You say you get three calls a month regarding specifically eight-year-olds, involving—

Ms. Karyn Kennedy: Most of the calls we receive are from elementary schools, where teachers have concerns that there has been inappropriate sexual behaviour between children, and they don't know how to deal with it.

Mr. Rosario Marchese: Right. I think I heard you say eight-year-olds.

Ms. Karyn Kennedy: Some of the cases—one of the cases we were recently consulted about was eight-year-olds, yes.

Mr. Rosario Marchese: Do you see that more frequently today than you might have? I don't know—

Ms. Karyn Kennedy: Yes, definitely.

Mr. Rosario Marchese: How do you explain that, if you have an explanation? What's going on?

Ms. Karyn Kennedy: I'm not exactly sure how to explain that. I think that children are exposed, through the media and all kinds of other ways, to more sexually explicit things than they would have ever seen before. But I think, too, sometimes it's a matter of teachers needing to understand what's normal and what's not normal sexual development. Sometimes we get calls about things that really are very minor and are being treated as very serious. The opposite happens too: Something that is very serious is being not seen that way at all.

Mr. Rosario Marchese: Yes. I agree with the idea of supportive—I don't know if you could use the word "intervention"—support on a regular basis to teachers and principals, to understand what's going on and how to deal with that. I'm assuming it's being done but it's sporadic, and some are doing it, some are not. You pointed out that 34% of Ontario school boards have implemented such a policy—your type of program. Is that the case, with that figure?

Ms. Karvn Kennedy: Yes.

Mr. Rosario Marchese: I think supportive interventions are useful. We should be thinking about that. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr.

Marchese. Ms. Sandals.

Mrs. Liz Sandals: Thank you for the work you're doing. One of the things that we found—I've now put on my safe schools action team hat—was a huge variability in the way CASs respond, I would concur with you, when it's child-on-child abuse. The other thing that we found huge variability in was the receptiveness of individual schools to interact with agencies like yours that have expertise in the whole area around sexual abuse of children.

Can you give us any advice on how you get schools to engage with agencies like yours which actually have expertise and take advantage of it? Because, as you've articulated, often the staff and the principals have no comfort level with the behaviours they've run into.

Ms. Karyn Kennedy: Absolutely. I think that it begins with providing education and information to the school staff—to the principals and teachers. The request we often get is, "Come in and talk to the children and try to solve this problem," and our response is, "We'll be happy to do that as long as we get to talk to the teachers as well," because that's where the training has to start.

In terms of getting schools to engage with agencies like ours, I think we need to let them know that the information we have doesn't have to be threatening, it doesn't have to make them more anxious. In fact, I think it will probably ease their anxiety. But there needs to be ways to integrate it into what they're already receiving. I think, ideally, I would love to see this kind of training—recognizing abuse, recognizing the indicators, recognizing what happens amongst peers—in teachers' colleges so that they get the training before they even set foot in the schools.

Mrs. Liz Sandals: You're now part of a long list of about 50 things that must go into teachers' college, but that's another issue.

The Chair (Mr. Shafiq Qaadri): Ms. Savoline.

Mrs. Joyce Savoline: I thank you for your presentation today. Based on the experience of your organization, do you think there's value for the CAS to be contacted in serious student-on-student violence, especially sexual violence within schools?

Ms. Karyn Kennedy: Yes, I believe that the CAS should be called every single time, even if just to consult. The response that sometimes schools get is that the child who is perpetrating the violence is not above 16, so they

wouldn't be involved. But I think that making that call just to consult, at least to get them to check their records, gives them an opportunity to look at whether they've ever had involvement with either child or family.

Mrs. Joyce Savoline: Do you think Bill 157 is an ideal opportunity to include that?

Ms. Karyn Kennedy: Yes.

Mrs. Joyce Savoline: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Savoline, and thanks to you, Ms. Kennedy, for your deputation on behalf of Boost Child Abuse Prevention and Intervention.

JOYCE

The Chair (Mr. Shafiq Qaadri): We have now our final presenter of the day, who comes to us via teleconference. I will allow you, our caller and presenter, to identify yourself in as much detail as you see fit. You have 10 minutes in which to make your presentation. Are you there?

Joyce: Yes, I am.

The Chair (Mr. Shafiq Qaadri): Please proceed. Your time begins now.

Joyce: Hello, my name is Joyce, a mother of two young girls who currently attend a school in Ottawa. I thank the Standing Committee on Social Policy for giving me this opportunity to speak regarding Bill 157.

Overall, I believe Bill 157 is a positive step toward making Ontario schools safer, and it may reduce the risk of schools and school boards from minimizing or ignoring serious events that occur on school property. The safe schools action team has provided an insightful and comprehensive report on which this bill is based. If passed, it will bring some of the changes that I have been seeking for the past two years.

Having said this, I do feel Bill 157 could be made even stronger by amending it to include a team of trained and independent investigators. They would be specially trained to interview young children about traumatic events, implement rules and procedures, preserve evidence and act as a neutral body in a situation where emotions run high, where there's an instinct to act defensively, and where there is no longer a sense of trust in the system. These investigators would be available anywhere they are needed in the province to conduct the investigation and to aid principals in their decisions as to how to best deal with serious occurrences, to ensure that victims' voices are heard, that the rights of the accused are not violated, and that witnesses can be interviewed with objectivity in a knowledgeable manner. None of the current institutions and pieces of legislation that exist within our province has this ability, but the need for this does exist.

I speak from experience. While the facts of what happened to my then seven-year-old daughter are in dispute, the following is based on her account.

1820

In May 2007, my daughter revealed to me disturbing incidents that were happening to her at her school. During the months leading up to her disclosure, my

daughter was showing signs that something was seriously upsetting her. She started having nightmares, screaming out during the night, refusing to go to school, losing weight, refusing to eat and becoming very withdrawn. She revealed that up to four of her male classmates were grabbing her on the playground and forcing her against a fence, hidden from the teacher's view by the trees on the playground. As one boy held my daughter's arms behind her back, the others would take turns shoving their hands down her pants and up her shirt to feel her private parts.

In the classroom, the main perpetrator would whisper lewd comments to her, inviting her to touch his penis and saying that he wanted to have sex with her and see her naked in the washroom. My daughter did ask one teacher for help and was told to handle this matter herself. Further requests resulted in this teacher ignoring her plea for help. Finally, my daughter complained to a substitute teacher, who wrote down the details of what my daughter had told him and he provided his notes and his information to the school.

The principal's investigation was completed within two days, despite her cancelling the arrangement with the school social worker to interview my daughter. The majority of the interviews were conducted first by the grade I teacher and then by the principal. Both the teacher and the principal agreed that they did not possess any special training or skills needed to do this type of questioning, yet these same two individuals also took it upon themselves to speak to the mother of the main perpetrator the week prior to my daughter's disclosure because this very boy was caught by a teacher being sexually inappropriate toward a different female student.

It was only at my insistence that the principal agreed to involve outside agencies such as the children's aid society. They refused to provide a copy of the note made by the substitute teacher to me. I was treated like a hysterical mother, whereas I wanted the situation properly investigated. After two days, the principal decided this incident did not happen as my daughter described, that this was "a game of soldiers" that my daughter misinterpreted and that the school could offer counselling to her to deal with this uncomfortable situation.

If the main boy involved repeated this offence the school would suspend him, but they could not provide a safety plan as to how to prevent this from happening again to my daughter. I refused this offer and I followed the appeal process, which ends at the upper echelons of the school board. All representatives took the same stance: that this was a game of soldiers that went wrong, that I'm a hysterical mother and the events did not occur as my daughter relayed to me. This hostile stance is still held by the board and their legal representatives to this day.

This stance differs from the feedback provided to me by outside agencies who did become involved, although briefly. While I described to the detective investigating this matter the stance of the school and the school board, he verified my daughter's account. The main perpetrator, when properly interviewed by a children's aid society worker, admitted to all my daughter's allegations. Her stories were real; she had, in fact, been sexually assaulted in the schoolyard. Further conversation revealed that the principal had withheld some of the information, such as the fact that a teacher refused to respond appropriately to my daughter's pleas for help.

The police would not remain involved as the boys were below age 12, the minimum age needed to be charged with a crime, and the teacher did not commit a crime as the abuser was another child and not an adult. The children's aid society would not become involved with my daughter as I had done the protective action need and removed her from the abusive situation. Also, their role is just to investigate abuse committed by adults, not children.

While I can understand the need for autonomy for a principal to make a decision, without training on how to properly interview children and without a provision for some form of dependable, independent investigation, oversight or an appeal process that extends beyond the school board itself, I fear there will always be some individuals in power who will continue to act defensively and ignore changes that Bill 157 is striving to make.

As I read the SSAT report last December, I was left questioning the steps and processes parents and students can take should schools and school boards not follow the legislation, and I feel that this is not addressed in this current legislation. If something like sexual misconduct or assault happens in the school, there should be a very clear process put in place to immediately respond in a rational and effective manner. Emotions can run high, and there is additional frustration with not being able to know the process or trust the qualifications of the person who is responsible for finding out what happened and respecting the rights of all people involved. It is my request that the standing committee follow the protocols in place to have Bill 157 amended to include this missing piece.

The Chair (Mr. Shafiq Qaadri): We have a minute per side. Ms. Sandals.

Mrs. Liz Sandals: Could you just clarify who contacted the CAS eventually and what their response was?

Joyce: Initially, I contacted the principal and asked her to involve CAS. At first, she refused. I told her that CAS had to be involved and that if she didn't call CAS, I would report it and I'd also make it known that she had initially refused as well. She agreed to call based on, I guess, my threat or whatever and reported back to me that CAS refused to investigate it because they felt it wasn't violent enough. However, I called CAS—

The Chair (Mr. Shafiq Qaadri): We'll move to the next question. Mr. Shurman.

Mr. Peter Shurman: Joyce, thank you for appearing. Please tell me what you believe "mandatory reporting," as the term is used in the bill, means, where a principal is concerned.

Joyce: The mandatory reporting is that, obviously, if a young boy was showing signs of violence that he was displaying toward my daughter or if he was witnessed by

another teacher the week prior displaying some really disturbing patterns toward another female student, the principal should have brought in CAS right away.

Mr. Peter Shurman: And how about reporting to

Joyce: Well, as it turns out, over the weekend my daughter revealed to me what had happened. So, basically, the principal became aware of the facts as I did.

Mr. Peter Shurman: Should the principal have called you?

Joyce: I think the principal should have made it known to the parents of the other involved children right away, and it's my understanding that she did not.

Mr. Peter Shurman: Do you want this legislation

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Shurman, Mr. Marchese.

Mr. Rosario Marchese: Joyce, I just want to thank you for calling in. We heard three cases with other parents who have deputed here today, talking about incidents of sexual abuse against their children, serious sexual violations where the principal, trustees and the boards have failed them. As we hear more and more of these stories, we realize we need a process in place to deal with it.

Joyce: I agree.

Mr. Rosario Marchese: I just can't tell you how upset I am, and I'm hoping everyone else is around the table. These incidents should not be happening. Principals should not be saying it's a game of soldiers. It's a serious case, it's not a game, and they cannot get away with it. If they need training, then we need to train, but we need a serious process to deal with it.

Joyce: If you find it upsetting, imagine what it is for a seven-year-old—

Mr. Rosario Marchese: Of course. I agree.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese, and thanks to you, Joyce, for your deputation brought by teleconference.

If there's no further business, I'd just remind the committee members that the deadline for written submissions is Wednesday, May 6 at 5 p.m.; filing amendments, Thursday, May 7 at 5 p.m. Clause-by-clause consideration of the bill is Tuesday, May 12.

If there's no further business before the committee, the committee is adjourned.

The committee adjourned at 1827.



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Legislative Assembly of Ontario

First Session, 39th Parliament

Official Report of Debates (Hansard)

Tuesday 12 May 2009

Standing Committee on Social Policy

Education Amendment Act (Keeping Our Kids Safe at School), 2009

Assemblée législative de l'Ontario

Première session, 39^e législature

Journal des débats (Hansard)



Mardi 12 mai 2009

Comité permanent de la politique sociale

Loi de 2009 modifiant la Loi sur l'éducation (sécurité de nos enfants à l'école)

Chair: Shafiq Qaadri Clerk: Katch Koch Président : Shafiq Qaadri Greffier : Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Tuesday 12 May 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Mardi 12 mai 2009

The committee met at 1541 in committee room 1.

EDUCATION AMENDMENT ACT (KEEPING OUR KIDS SAFE AT SCHOOL), 2009

LOI DE 2009 MODIFIANT LA LOI SUR L'ÉDUCATION (SÉCURITÉ DE NOS ENFANTS À L'ÉCOLE)

Consideration of Bill 157, An Act to amend the Education Act / Projet de loi 157, Loi modifiant la Loi sur l'éducation.

The Chair (Mr. Shafiq Qaadri): Colleagues, ladies and gentlemen, I welcome you to clause-by-clause consideration of Bill 157, An Act to amend the Education Act. If there's no further business before the committee, we'll invite amendment number 1, by the NDP. Mr. Marchese.

Mr. Rosario Marchese: I move that section 300.1 of the Education Act, as set out in section 1 of the bill, be amended by adding the following subsections:

"Same

"(5) A delegation under this section shall be in accordance with any collective agreements in effect at the time of the delegation.

"Same

"(6) A delegation under this section shall be made from a list of employees who have volunteered for delegation.

"Same

"(7) If one or both of the requirements set out in subsections (5) and (6) cannot be met, the delegation shall be made from a list of experienced administrators that the board creates for the purpose."

Mr. Chair, we think this is a very proactive amendment that is useful, based on what we heard. We also hear from many teachers that a lot of principals are outside of the classroom far too often, sometimes more than they should be, and I think we need to worry about their absences from the classroom. These amendments help to deal with that. So (5), in terms of the argument we want to make, is that we would actually prefer the schools never be left without an administrator. That's the logic under which we're operating in terms of why we're proposing that section.

Many collective agreements have articles dealing with the concept of a teacher in charge, in terms of coverage of classes and planning and preparation time, and we feel that any proposed legislation must respect these agreements.

In terms of the reasoning we put to the delegation on "This section shall be made from a list of employees who have volunteered for delegation," this would ensure that the position is filled by employees who feel they have the experience required. We feel that this amendment will greatly improve the probability of success should such delegation of responsibility be required.

The reasoning for "(7) If one or both of the requirements set out in subsections (5) and (6) cannot be met, the delegation shall be made from a list of experienced administrators that the board creates for the purpose": The argument is that meetings for administrators should take place as much as possible outside of school hours, not during the school day. We understand that sometimes there have to be meetings during the school day, but if it does happen, it should be infrequent. The argument we make is that if a supply teacher can be provided to replace an absent teacher, then a supply administrator can be provided to replace an absent principal or vice-principal. So the board should create a supply list made up of retired principals and vice-principals whom you can call upon if and when a principal is required to be in a meeting that's in the day, that you then create such a list for administrators who have that experience to fill in.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. Any further comments?

Mrs. Liz Sandals: Yes, thank you. First off, I would like to say that within the delegation subsection we have—or will have when we finish amending, I would hope—authority to do regulations and policy so that we can flesh out a lot of detail around this in the policy sections.

Secondly, I'm not aware that anything we're doing would in fact override any collective agreement, because the delegation powers, as currently constituted, I don't think say anything about collective agreements per se.

But most importantly, we really have to be cognizant, when we're amending the Education Act, that we have to create a law that will work in any school in Ontario. Let me give you a scenario which in my experience is not unusual. You have a small elementary school in a rural community. Maybe you've got 50 or 60 kids. You've got

a principal who is part-time. Maybe part of the time they are formally being the principal and the rest of the time they're being the librarian and the special-education resource withdrawal teacher, but they're normally in the school most of the time. And then you get some day at recess when some little kiddie gets hurt, and you call emergency services, and the volunteer fire department comes, and eventually the ambulance gets there. In the meantime, the principal has been trying to track down mom and dad, because it may be 45 minutes or an hour to the hospital. What you find is that dad's off in the bush in a logging camp or something, and nobody can track down mom. So the principal at that point is left with a decision, and that decision should quite rightly be in the best interests of the child. You can't dispatch some little kid off all alone in the ambulance; somebody needs to go. But somebody needs to stay with the other kids and teach the classes. So at that point the principal is likely to say, "I'm going to have to go with the kid," and point to the most experienced teacher in the school and say, "You carry on. I've got to go."

At that point, whether or not somebody has, under a collective agreement, volunteered to do this is, quite frankly, not the thing that's top of mind. Certainly a supply list of retired principals—although you might have one who's willing to step in, given advanced notice, they're not available to step in in an emergency. Principals, although you might have one who's willing to step in given advanced notice, are not available to step in in an emergency. Principals really need the flexibility to respond to the situation as it occurs. If we fix the scheme that is set out here in legislative language—because there's nothing that says, "Except in the case of an emergency situation." It just says that this is the way it unfolds. Unfortunately, because of that, this might work in urban situations when you've got advanced planning, but it isn't going to work in a lot of situations when you've got an emergency.

The Chair (Mr. Shafiq Qaadri): Mr. Marchese.

Mr. Rosario Marchese: I don't agree with Ms. Sandals. I understand the case she makes, but she failed to make reference to (6), where we say, "A delegation under this section shall be made from a list of employees who have volunteered for delegation." You've got two scenarios: one, where you have a list of teachers, experienced ones, who are willing to be delegated; and then you've got the other, subsection (7), which also says that you've got a list of administrators you can call upon. You either have one or the other, so if you have both of those two sections that I referred to, you should be safe in being able to delegate from a list that you already have and/or calling an administrator. This is a generalized kind of plan, an approach that isn't just for a community in Toronto. I think it fits all communities across Ontario.

The Chair (Mr. Shafiq Qaadri): Are there any further comments, questions, rebuttals, cross-examinations? Ms. Sandals.

Mrs. Liz Sandals: I guess simply that in Mr. Marchese's remarks, he's assuming that there will be volunteers, and

given that you may have a situation where you've only got two or three teachers, I can't guarantee there would be volunteers. If there are no volunteers currently on the list, you would be less—in having to refer to (7), which is untenable in an emergency situation.

Mr. Rosario Marchese: On a recorded vote, just in case we lose sight of that.

Ayes

Marchese, Savoline, Shurman.

Navs

Craitor, Dhillon, Jaczek, Ramal, Sandals.

The Chair (Mr. Shafiq Qaadri): I declare NDP motion 1 defeated.

Government motion two, Ms. Sandals.

Mrs. Liz Sandals: I move that subsection 300.2(2) of the act, as set out in section 1 of the bill, be struck out.

If I could just explain that, the sections we're deleting refer to the situation where an employee is reporting some sort of unacceptable behaviour to the principal. The current bill exempts an employee from reporting that to the principal if the employee knows that a report has already been made to the principal about the matter and has no reason to believe that his or her report would provide the principal with useful additional information.

We heard at committee hearings from the unions that they were uncomfortable with determining how they would know whether somebody else had made a report, and whether or not they actually had additional information. We heard from principals and supervisory officers that they would rather hear the report from everyone and sort out what was most useful. We listened to what was said at the hearings. We were trying to be helpful. It seems that this is not helpful, so we're suggesting that we delete those exemptions. So the effect of this deletion will be that every employee is required to report the information to the principal.

The Chair (Mr. Shafiq Qaadri): Mr. Marchese.

Mr. Rosario Marchese: I just want to say that we did have a number of people talk about this, particularly CUPE, and it wasn't that they were uncomfortable, it was that they said on every incident they would have to fill out a whole lot of paperwork for everything that happened, because there was no way to make sure that (a) or (b) of that section would properly reflect them or properly protect them. They would have to write down everything that happened, and it seemed unreasonable; rather than make the unions uncomfortable, it was an unreasonable request. I just want to say that here is an instance where government sometimes listens to delegations and they remove a section. In this particular section, I want to compliment the government, because they listened and they did well by striking it out.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr.

Marchese. Ms. Savoline.

Mrs. Joyce Savoline: I guess this is going to be a love-in, because we do appreciate the government bringing this amendment forward. The students should be our focus in all of this, and I think what this does is not allow us to assume anything in regard to the safety of a student. So regardless of an employee reporting, it shouldn't matter how many employees report or whether they think it's something that should be reportable. That free flow of information to the ultimate authority in that school, which is the principal, I think is what this allows. So I appreciate the government striking this part.

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, I'll proceed to the vote. Those in favour of government motion 2? With none opposed,

motion 2 is carried.

We are now waiting for a photocopy of a hot-off-thepress, fresh amendment to be proposed by the PC side by Mr. Shurman.

Interjection.

The Chair (Mr. Shafiq Qaadri): We'll have a five-minute recess for the administration to happen.

The committee recessed from 1554 to 1556.

The Chair (Mr. Shafiq Qaadri): I now invite Mr. Shurman to present amendment 2.1 from the PC side.

Mr. Peter Shurman: I move that section 300.3 of the act, as set out in section 1 of the bill, be amended by adding the following subsections:

"Same

"(3.1) The principal shall not form the opinion referred to in subsection (3) without consulting with one or more of the following:

"1. The director of education;

"2. The local police department;

"3. The appropriate children's aid society."

If we go back to the hearings, this is about the issue of a principal having absolute power, or some other power, to report back to parents. It particularly referred to parents where there was some kind of record of which the principal was aware that harm might come to the child by reporting to the parent.

Our caucus is very strong on the fact that the power resting with the principal should not be absolute, because there are plenty of recorded examples of principals who are abusive. In one case, we heard about a principal who was a convicted sex offender. So we want a duty on the part of the principal, where there is a question, to have to consult with one or more of the named authorities.

The Chair (Mr. Shafiq Qaadri): Comments? Mr. Marchese, and then Ms. Sandals.

Mr. Rosario Marchese: I'll go after Ms. Sandals.

The Chair (Mr. Shafiq Qaadri): Ms. Sandals.

Mrs. Liz Sandals: I've lost track of where we've already got the regulatory authority, but we will be putting forth regulations and policies that give principals direction in terms of needing to consult. I'm very loath to tie the principal down to having to consult with the director of education, which will become clear in my comments on the next PC amendment, so I'm not going to walk through all of that now.

If I were going to have my druthers, it would probably be the supervisory officer for the school that the principal should be consulting with. But I believe that the best place to put that is in the policy guidelines around how to handle this.

The Chair (Mr. Shafiq Qaadri): Mr. Marchese, and then Ms. Savoline.

Mr. Rosario Marchese: I was actually going to propose a friendly amendment to add "superintendent," because it's very difficult to talk to the director on almost anything.

I know this is a very serious issue, but I think that even the ability to talk to a superintendent gives enough oversight that you're covered in terms of what you want to achieve. I don't think you should be consulting all these people all the time, but if you have "superintendent," it allows the principal to be—I'm not sure Ms. Sandals is listening; I'd rather wait.

Mr. Peter Shurman: It's not going to matter.

Mr. Rosario Marchese: I was actually going to propose that we add "superintendent" to that list as a friendly amendment.

Mrs. Liz Sandals: If I may, I would still prefer to see that in the policy guidelines. I think we're making up direction that is quite significant on the spot.

Mr. Rosario Marchese: I've got it. So you'll be opposing it?

Mrs. Liz Sandals: I would rather see this go in policy guidelines.

Mr. Rosario Marchese: If I can recommend a friendly amendment, do you accept the addition of "super-intendent"?

Mr. Peter Shurman: I absolutely accept it.

Mr. Rosario Marchese: That would be my amendment to the motion, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): I will now ask the committee to vote on the amendment to the amendment.

Mr. Rosario Marchese: A recorded vote.

The Chair (Mr. Shafiq Qaadri): Before we do so, Mr. Marchese, could you specifically tell us—

Mr. Rosario Marchese: Yes.

"(3.1) The principal shall not form the opinion referred to in subsection (3) without consulting with one or more of the following:

"(1) Superintendent

"(2) The director of education

"(3) The local police department

"(4) The appropriate the children's aid society."

I am adding "superintendent" to that list.

The Chair (Mr. Shafiq Qaadri): To be clear, (1) is "Superintendent." I presume all members can follow that.

Mr. Rosario Marchese: A recorded vote, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): All those in favour of the amendment to the amendment?

Ayes

Marchese, Savoline, Shurman.

The Chair (Mr. Shafiq Qaadri): All those opposed? Carried.

Mrs. Liz Sandals: And now the main motion.

The Chair (Mr. Shafiq Qaadri): Yes, but we have Ms. Savoline.

Mrs. Joyce Savoline: I would hope we could support this, and I understand what Ms. Sandals is saying: that there is yet process to continue. But when we were here last week, we clearly heard from the parents that this is about accountability and how we inject that accountability. I think they need to see it in the bill, and I think it needs to be in the bill so that the message goes forward to those people forming the policies and regulations that are going to expand—that's what policies and regulations are; they're an expansion of the intent of what is written in the bill. I would hope we could include this, especially since Ms. Sandals is saying that this kind of thing will be rolled into policies and regulations.

Let's not leave it to chance. Let's let those who have already suffered and those who may be on the verge of having to deal with these horrible, horrible issues in their lives see that we're here and we're serious about clearing up a process that has been somewhat vague. I just don't see the harm in seeing it in the bill, and showing and proving that accountability up front, so that the writers of the policies and regulations can then go off and have a clear direction from this committee. That's our job here: to give direction to those writers about what they're supposed to be writing about.

The Chair (Mr. Shafiq Qaadri): Are there any further comments?

Mr. Rosario Marchese: Recorded vote.

The Chair (Mr. Shafiq Qaadri): To be clear, we're now voting on PC amendment 2.1, as amended.

Ayes

Marchese, Savoline, Shurman.

Nays

Craitor, Dhillon, Jaczek, Ramal, Sandals.

The Chair (Mr. Shafiq Qaadri): I declare 2.1 defeated.

Mrs. Liz Sandals: Chair, people keep coming and trying to give me procedural information while I'm trying to follow—

The Chair (Mr. Shafiq Qaadri): You should feel very privileged, Ms. Sandals.

Mrs. Liz Sandals: If there is a need to sort out procedure, I wonder if we could take a five-minute recess, instead of me trying to listen to two conversations at once.

The Chair (Mr. Shafiq Qaadri): Would the committee be willing to break for five minutes for procedural issues?

You have your recess, Ms. Sandals.

Mrs. Liz Sandals: Thank you.

The committee recessed from 1604 to 1606.

The Chair (Mr. Shafiq Qaadri): The committee will reconvene. I believe we are now going to invite Ms. Savoline to present PC motion 3.

Mrs. Joyce Savoline: I move that section 1 of the bill be amended by adding the following sections to the act:

"Other notice

"300.3.1 If the principal of a school believes that a pupil of the school has been harmed as a result of an activity described in subsection 306(1) or 310(1), the principal shall, as soon as reasonably possible, notify,

"(a) the chair of the board;

"(b) the director of education of the board;

"(c) the appropriate police department; and

"(d) if the activity is sexual in nature, the appropriate children's aid society."

Once again, this speaks to the accountability portion that we're trying to establish in Bill 157, and we feel that these things need to be clearly stated in the bill in order for that to happen and then, as it moves through its process, so that there's clear direction to the writers of regulation and policy.

The Chair (Mr. Shafiq Qaadri): Further commentary? Mr. Marchese and then Ms. Sandals, or the reverse.

Mr. Rosario Marchese: Go ahead.

Mrs. Liz Sandals: Just to be clear, we're dealing with this separated?

Mrs. Joyce Savoline: I can do them all at the same time.

Mrs. Liz Sandals: Well, I don't care. I just need to know.

Mr. Rosario Marchese: Sorry, "separated" meaning? Did you just stop? Joyce, you just read a portion of it? It's the whole motion. You've got to read the whole thing.

Mrs. Joyce Savoline: Okay. I'm still back in my municipal life where we would do it a section at a time so that—

Mr. Rosario Marchese: No. It's one motion.

Mrs. Liz Sandals: That's why I'm confused. Mrs. Joyce Savoline: Thank you, Ms. Sandals.

"Safety plan

"300.3.2(1) If the principal of a school believes that a pupil of the school has been harmed as a result of an activity described in subsection 306(1) or 310(1), the principal shall, as soon as reasonably possible, develop a written safety plan for the harmed pupil and implement the plan.

"Same

"(2) When developing a safety plan for a pupil, the principal shall consult with teachers who in the principal's opinion are likely to have insight into what would constitute a helpful and appropriate plan for the pupil.

"Same

"(3) Except where subsection 300.3(3) applies, when developing a safety plan for a pupil, the principal shall also consult with the parent or guardian of the pupil.

"Documentation by principal

"300.3.3 If the principal of a school believes that a pupil of the school has been harmed as a result of an activity described in subsection 306(1) or 310(1), the principal shall maintain written documentation,

"(a) describing the activity and the harm;

"(b) describing the actions taken in response to the activity and the harm; and

"(c) setting out the reasons for the actions taken in response to the activity and the harm."

I need direction. I have something to add to that line. Can I add it now?

Ms. Mariam Leitman: You're adding it as a closing flush after clause (c).

Mrs. Joyce Savoline: Thank you.

"And shall file the documentation with the director of education."

It needs to be in two places for accountability.

"Offence

"300.3.4(1) A person who fails to comply with section 300.3, 300.3.1, 300.3.2 or 300.3.3 is guilty of an offence. "Same

"(2) A person convicted of an offence under subsection (1) is liable to a fine of not more than \$1,000."

The Chair (Mr. Shafiq Qaadri): Are there any comments? Ms. Sandals.

Mrs. Liz Sandals: When we look at 300.3.1, just to note that the requirement that's being proposed for the principal here is essentially around all offences that could lead to either suspension or expulsion. For example, under 300.3.1, we would now be notifying the appropriate police department in every instance of bullying. That is not the intention of the school board police protocol or the existing PPM 120. The intent of both of those, which I would note have been negotiated with the police, is that the police should be notified when there is criminal activity—that's basically the intent of those sections—not that the police should be notified whenever you've got an instance of things which are non-criminal such as bullying. So I would suggest very respectfully that this is overkill in terms of notifying the police.

It's also purely impractical, and I'd like to give a bit of data here if I may, Chair. This was for the 2006-07 school year. The total number of students who were suspended and expelled in Thames Valley was 5,388 students. This is in a board of about 72,000 students. Now, there are 194 school days, so that means every day there would be approximately 25 to 30 calls to the director of education, about three to four calls every hour.

If you look at the Peel District School Board, which is a board with about 148,000 students, in the same year they suspended or expelled 7,004 students. That would be somewhere between 35 and 40 calls per day to the director of education—four to five calls each and every hour, if we assume that these incidents are going to happen between 8:30 in the morning and 4:30 in the afternoon.

The Toronto District School Board has about 244,000 students, give or take a few thousand. In that year, they suspended or expelled 10,070 students, which would give

us about 50 to 55 calls per day to the director or about six to seven calls per hour, and I would note that this isn't just to the director. This is to the police. Quite frankly, I suspect that the Toronto police department would go absolutely ballistic and tell us that they're not showing up for anything when what we really want the police to do is to show up for things that truly matter.

So, when you look at the volume of the calls that would be required by this particular section, it's just unreasonable. The chair would be receiving the same volume of calls, and the chair, by the Conservatives' own rewriting of the Education Act, is expected to be a part-time position. So I'm not sure when this part-time chair is even going to be around to receive all these calls that are going to come in on a daily basis.

Plus, because the board is the appeal mechanism for a suspension, if you are appealing a suspension, then the board is the quasi-judicial body which hears the appeal, and if you have an expulsion, the board is the quasi-judicial body which hears the expulsion hearing, the last thing in the world you want is that that body should be notified of the details of each and every offence from the point of view of one side of the story, i.e., the principal's before it even happens.

The bottom line here is that this is just totally impractical.

In terms of the safety plan, there are some circumstances in which it's an excellent idea to have a safety plan, not necessarily in each and every one of these instances, because as you can tell from the numbers I've just quoted, we're now making thousands of safety plans, but what we will do is put the requirement for safety plans into policy so that you can pick and choose the ones where it actually matters. Similarly with documentation—well, not similarly. Quite frankly, principals normally document these things anyway. Again, that can be required in policy; it doesn't need to be in legislation.

In particular, the bit that you just added at the end about filing the documentation with the director of education is actually not where it should be filed. It should be filed, if it's going to be filed, in the Ontario student record, which is the official record of a student, not in the director's office, because the OSR is the common point where everyone goes to access information about students.

Finally, there's the issue that if you fail to comply with all of the above, anybody would be guilty of an offence of not more than \$1,000. I understand that what you're trying to do here is make people accountable, and quite frankly we have no problem with making people accountable, but I would suggest to you that the accountability mechanism through the Ontario College of Teachers is in fact a very accountable mechanism already.

1620

The most recent data that we could get from the Ontario College of Teachers indicates that in 2005, 86 teachers of the college—and that would include teachers and principals; it should be "members of the college"—were found guilty of professional misconduct; in 2006,

95 members were found guilty of professional misconduct; and in 2007, 108 were found guilty of professional misconduct. That would be a total of 289 members.

The definition of "professional misconduct": Professional misconduct can fall under many categories, some of which include physical, sexual, verbal, psychological or emotional abuse of a student; failure to maintain the standards of the profession; failure to comply with the Ontario College of Teachers Act, regulations or bylaws, or the Education Act and its regulations; there's actually one here which is failure to comply with the reporting requirements under family and children's services law; and the signing or issuing of false and misleading documents. So if I can shorten that for the purposes of what we're looking at here, professional misconduct may result if a member fails to follow the Education Act and its regulations. Of course, what we are doing here is putting a number of the reporting requirements into the Education Act, which means that they now could be the subject of a complaint and that the complaint may be lodged by a member of the public.

In comparison, the Child and Family Services Act and the reporting requirements there—we don't have any data for that, but I think any of us who have been following education for the last number of years would be aware that while there may have been one or two high-profile cases in which someone has been charged, though not necessarily convicted, under a similar provincial offence regime, that rarely happens. So I would suggest to you that the accountability mechanism that is automatically invoked when you put something into the Education Act is, from the point of view of a member of the College of Teachers, in fact the much more serious accountability mechanism, because it's the one that we actually know is being used routinely and is working. So we think that that's where the appropriate accountability mechanism should be.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Marchese.

Mr. Rosario Marchese: Ms. Savoline, if I thought the Liberals, through Ms. Sandals, would support an amendment and that it would work, rather than putting "the chair of the board," "the director of education," and "the appropriate police department," because that's a whole long list, I would have put "superintendent" in there and replaced the other three—and kept (d), "if the activity is sexual in nature." So I would have kept those two, but I don't think they're going to support that either.

I just want to make the argument that I think this is a very useful amendment, and based on what I heard at the hearings, particularly the issues connected to sexual harm and sexual violence of young kids on other young kids—that for me was a very important revelation. I must admit I was really furious when I heard some of the stories, and I felt these amendments would help to deal with that. So we weren't talking about violence of teachers against students; we're talking about violence of students against other students. That's what we heard in private from three parents, and from another parent who wasn't in

private but it was the same story: It was sexual harm, sexual abuse of young people against other young people. The way they were dealt with was inadequate and unbelievably harmful to the students, because we didn't do an adequate job—at least, the principals didn't do an adequate job of dealing with it.

So I thought, developing a written safety plan for the harmed pupil seemed good, seemed reasonable to me. Then, on page 2: "maintain written documentation ... describing the activity and the harm ... the actions taken in response ... setting out the reasons for the actions taken." I know it's paperwork, but some of this stuff is serious. I know that we shouldn't be dealing with all issues of bullying. I don't think that's what you meant, because that would be silly. It really would, because some stuff doesn't merit a whole written report. Your amendment doesn't necessarily get at that, and I don't think you've intended it for that, but I really do believe that you meant it to deal with those very serious issues of sexual abuse and also serious, serious issues of bullying that might cause harm.

In this respect I thought the amendment was a useful one, of having a written safety plan and a written documentation. So I'm going to support your amendment, even though I feel I would have changed it to include "superintendent" rather than the other three. But I'm not sure that that would make any difference to the Liberal caucus members who are here.

The Chair (Mr. Shafiq Qaadri): Ms. Savoline.

Mrs. Joyce Savoline: I thank Ms. Sandals for all the statistics, but I think it was an attempt to trivialize what I'm trying to do here and what our PC caucus is trying to do, and that's inject some accountability into what is not happening now. Quite frankly, nobody in their right mind would expect a principal to do all this stuff on a one-off in a playground. That is just not at all what is being proposed here.

"Notify" doesn't mean a phone call. How many phone calls? Fifty phone calls to a director of education or to the board chair? Nobody's talking about phone calls. "Notify" can be a process that's developed that is a notification to these other people that the principal is on the job. What we heard about in those four instances, plus what the London coalition told us about, was that there are some principals who try to avoid dealing with these very urgent, critical, violent issues—babies on babies, for goodness' sake-within our schools for whatever reason. These kids are not getting the help that they need because it's not being addressed in a timely way. But if that information is being shared around, then I think the actions will be far different, because you know what? That's human nature. If somebody's going to find out about it, sometimes we just act a little differently. I think that that's all these were intending to do.

So to give me all these numbers, which are good statistics, to trivialize what this amendment was doing, just disappoints me.

The Chair (Mr. Shafiq Qaadri): Ms. Sandals.

Mrs. Liz Sandals: I think if you were to talk to people who have taken cases of sexual abuse and teachers who

have sexually abused students, or if you were to talk about other cases that have gone to the college of teachers, where teachers have lost their licences permanently—any of the parties to those cases would hardly describe them as trivial.

The Chair (Mr. Shafiq Qaadri): Are there any further comments? Seeing none, we'll proceed to consider PC motion 3. Those in favour of PC motion 3? Those opposed to PC motion 3? I declare PC motion 3 to have been defeated.

I understand, with your permission, Ms. Sandals, that government motion 4 will be stood down?

Mrs. Liz Sandals: We'll do it after 5 and 6.

The Chair (Mr. Shafiq Qaadri): Given that, we will vote on section 1, as amended, later. I now invite you to present government motion 5.

Mrs. Liz Sandals: I move that subsection 301(5.4) of the act, as set out in section 2 of the bill, be struck out and the following substituted:

"(5.4) The minister may establish policies and guidelines with respect to reporting to principals under section 300.2 or under a policy or guideline established under subsection (5.2).

"Same, support to certain pupils

"(5.5) The minister may establish policies and guidelines with respect to the support to be provided to a pupil when a principal does not notify a parent or guardian of the pupil because of the circumstances described in subsection 300.3(3).

"Same, governing responses by board employees

"(5.6) The minister may establish policies and guidelines with respect to responses under section 300.4 by employees of a board, including but not limited to policies and guidelines with respect to the kinds of responses that are appropriate."

Just in summary, because it's hard to read this absent the bill, it expands the policy-making authority for the minister from what is currently in the bill. It adds policyand guideline-making authority with respect to reporting to principals so that we can give more information in a policy. The teachers raised the issue of requiring a feedback loop to staff who have reported, and this would be the appropriate place to mention that.

It adds policy- and guideline-making authority with respect to supporting victims when a principal does not contact the parent of a victim, the thought being here that if the parent has not been contacted because of concern about further harm, then there should be an onus on the principal and the superintendent to look as to what other supports might be made available to the victim.

The one that I stood down, which I'll speak to later, is changing the language slightly in what's currently the intervention requirement, but there will be a policymaking authority there as well.

The Chair (Mr. Shafiq Qaadri): Any further comments? Ms. Savoline.

Mrs. Joyce Savoline: My comment would be that I move an amendment that changes all the "mays" to "wills"; that "The minister will establish policies and guidelines." What are we waiting for? Why would we delay any of this from happening? We need to move on this now, and refusing to take action now, when we have this perfect vehicle to do it-

Mr. Rosario Marchese: "Shall."

Mrs. Joyce Savoline: "Shall." Sorry. We're dealing with a bill that's going to turn into an act, and why would we not send that message out right from the get-go? Do it now and spare these families this uncertainty of what might or might not happen through the policy and regulation process. Show them that there is the will on the part of this government to make these changes.

The Chair (Mr. Shafiq Qaadri): Ms. Sandals, then Mr. Marchese.

Mrs. Liz Sandals: I would just comment that in my understanding of legislative drafting, these clauses are establishing the authority of the minister to do this. The usual legislative drafting of this is "may," because what you're doing is establishing authority.

The Chair (Mr. Shafiq Qaadri): Fair enough. Mr. Marchese, and then we'll proceed to vote on the amendment to the amendment.

Mr. Rosario Marchese: I really am pleased that the government has removed the language of intervention and all the amendments that are made by the government to eliminate the wording "intervention by teachers and other staff." I'm pleased that they listened to that. I made a strong case against the legal implications of teachers having to intervene. There was a duty to intervene, and it didn't matter what it was; they had to intervene. I thought that was wrong, and I thought that had serious implications on teachers and other staff and other people involved in the system. So I'm glad that the government has listened to that and made those appropriate changes.

I'm speaking now so that I won't have to speak on every other amendment that's made in the next few moments.

Also, I understand that "The minister may establish" is the procedure, but I don't know why we couldn't say, legally-maybe Ms. Leitman might want to tell us why. I think that if we had language that says "The minister shall establish policies," that would be clearer. I'm not sure why we couldn't say that.

Ms. Mariam Leitman: It is the case that it's our legislative convention—and it's followed virtually universally in Ontario law—that when we give authority, whether it's law-making authority or policy-making authority, we say "may." Whether we would use the words "may," "will" or "shall" has nothing to do with timing. "May," "will" and "shall"—none of them say anything about timing. We tend to use "may" for authority; for legislative power and authority, or policy and guideline authority and power that's very similar to legislative authority, because you can't in general, in law, force a lawmaker to make a law. You can't mandate that someone exercise a discretion.

Mr. Rosario Marchese: Yes, but "The minister may establish policies" versus "shall establish policies and guidelines"—I don't know how that deals with issues of discretion. Either way, they will still have to use their discretion.

Ms. Mariam Leitman: That's right. Either way, they have to use their discretion, because—

Mr. Rosario Marchese: So we would prefer the wording "shall."

Ms. Mariam Leitman: Yes, I understand. I was speaking, first of all, to the timing that Ms. Savoline raised—"shall," "may"; no difference.

In terms of what you're looking at, absolutely, we want the minister to do this. "May" and "shall," in law, have no difference because you can't go to a court and say, "Make the minister use his discretion."

Mr. Rosario Marchese: No, except this is regulation. The bill, by cabinet, says that regulations will happen, or may happen. So we're not directing the minister. We're directing that regulations do in fact get written.

Ms. Mariam Leitman: Actually, again, almost universally there's maybe a 0.001% exception. Regulation-

making authority is "may," not "shall."

Mr. Rosario Marchese: I understand that that's the language, and we've often debated and argued this, and we often say, "Why don't we just push the language of 'shall'?" It usually gets defeated by governments, and I understand, whether it's tradition or otherwise. I prefer the word "shall" myself.

Okay. I don't know whether Ms. Savoline wants to move that amendment or not.

Mrs. Joyce Savoline: I will move the amendment. and if there really is no difference, then why don't we just use the word "shall"?

The Chair (Mr. Shafiq Qaadri): All right. So, to summarize, we have now, to government motion 5, presented by Ms. Sandals, an amendment to the amendment. incorporating the word "shall" to replace the word "may." Is that correct? Thank you.

Mrs. Joyce Savoline: Recorded vote.

The Chair (Mr. Shafiq Qaadri): So we will now have a recorded vote on that amendment to the amendment, introducing the word "shall" in the place of the word "may" for government amendment 5, originally proposed by Ms. Sandals.

Those in favour of said procedure?

Ayes

Marchese, Savoline, Shurman.

Nays

Craitor, Dhillon, Jaczek, Ramal, Sandals.

The Chair (Mr. Shafiq Qaadri): Defeated.

Are there any further comments with reference to government motion 5? Seeing none, I'll proceed to the vote.

Mrs. Liz Sandals: Recorded vote.

The Chair (Mr. Shafiq Qaadri): Recorded vote. Those in favour of government motion 5?

Aves

Craitor, Dhillon, Jaczek, Marchese, Ramal, Sandals, Savoline, Shurman.

The Chair (Mr. Shafiq Qaadri): Thank you. Passed. Shall section 2, as amended, carry? Carried.

Government motion 6, Ms. Sandals.

Mrs. Liz Sandals: I move that subsection 302(3.1) of the act, as set out in subsection 3(2) of the bill, be struck out and the following substituted:

"Same, reporting to principals

"(3.1) If required to do so by the minister, a board shall establish policies and guidelines with respect to reporting to principals under section 300.2 or under a policy or guideline established under subsection 301(5.2), and the policies and guidelines must be consistent with those established by the minister under section 301 and must address such matters and include such requirements as the minister may specify.

"Same, support to certain pupils

"(3.2) If required to do so by the minister, a board shall establish policies and guidelines with respect to the support to be provided to a pupil when a principal does not notify a parent or guardian of the pupil because of the circumstances described in subsection 300.3(3), and the policies and guidelines must be consistent with those established by the minister under section 301 and must address such matters and include such requirements as the minister may specify.

"Same, governing responses by board employees

"(3.3) If required to do so by the minister, a board shall establish policies and guidelines with respect to responses under section 300.4 by employees of a board, including but not limited to policies and guidelines with respect to the kinds of responses that are appropriate, and the policies and guidelines must be consistent with those established by the minister under section 301, and must address such matters and include such requirements as the minister may specify."

The purpose of this is to give the minister the authority to order school boards to have local policy at the school board level which mirrors the policies that we just talked about in the previous amendment at the provincial level.

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Mr. Rosario Marchese: And it removes the word "intervention."

Mrs. Liz Sandals: And it removes the word—which I will talk about when we get to the next amendment.

The Chair (Mr. Shafiq Qaadri): Any further comments on government motion 6? Ms. Savoline.

Mrs. Joyce Savoline: Yes. I guess I'm having an issue with the word "if." "If" leaves a lot to chance. So I would move that the word "if" be removed and that the

statement read clearly, "The minister will require a board to establish policies and guidelines."

The Chair (Mr. Shafiq Qaadri): Thank you. We have another amendment to the amendment, proposed by Ms. Savoline, to government motion 6, introducing the word, as she's just said, with "shall" replacing "if." Is the committee ready to proceed with the vote on that?

Ms. Mariam Leitman: You can't just replace "if" with "shall" and end up with a grammatical sentence. I think you'd have to say—

Mrs. Joyce Savoline: I didn't; I took out the word "if." I didn't replace it; I went ahead with the rest of the sentence, saying, "The minister will require a board to establish policies and guidelines." I'm sorry; remove "If required to do so by the minister."

Ms. Mariam Leitman: And then replace it with "The minister shall require a board to"—

Mrs. Joyce Savoline: —"establish policies and guidelines," and it carries through after that. Take the ambiguity out. Give the people the accountability that they were looking for.

The Chair (Mr. Shafiq Qaadri): Ms. Leitman, do you want to summarize that for the committee?

Ms. Mariam Leitman: Sure. I believe the motion to amend the motion is to strike out the words, "If required to do so by the minister, a board shall" in each of (3.1), (3.2) and (3.3) and replace it with, "The minister shall require a board to."

The Chair (Mr. Shafiq Qaadri): Is that correct? Mrs. Joyce Savoline: Yes.

The Chair (Mr. Shafiq Qaadri): We'll now proceed to a recorded vote on that amendment to the amendment.

Ayes

Marchese, Savoline, Shurman.

Navs

Craitor, Dhillon, Jaczek, Ramal, Sandals.

The Chair (Mr. Shafiq Qaadri): Defeated, the amendment to the amendment of government motion 6.

Are we now ready to proceed to the vote on government motion 6?

Mr. Vic Dhillon: Was a recorded vote asked for?

The Chair (Mr. Shafiq Qaadri): Yes, a recorded vote was asked for. That's, in fact, why it was done. Those in favour—

Mrs. Liz Sandals: And now a recorded vote on this one?

The Chair (Mr. Shafiq Qaadri): It's up to you.

Mrs. Liz Sandals: Yes.

The Chair (Mr. Shafiq Qaadri): The government motion, on a recorded vote.

Ayes

Craitor, Dhillon, Jaczek, Ramal, Sandals.

Nays

Savoline, Shurman.

The Chair (Mr. Shafiq Qaadri): Government motion 6 is carried.

Shall section 3, as amended, carry? Carried.

We'll now return to section 1, government motion 4, previously stood down: Ms. Sandals.

Mrs. Liz Sandals: I move that subsection 300.4(1) of the act, as set out in section 1 of the bill, be struck out and the following substituted:

"Response by board employees

"300.4(1) If the minister has established policies or guidelines under subsection 301(5.6), an employee of a board who observes a pupil of a school of the board behaving in a way that is likely to have a negative impact on the school climate shall respond in accordance with those policies and guidelines and in accordance with any policies and guidelines established by the board under subsection 302(3.3)."

The main point here is that we have replaced the word "intervene" with the word "respond" in not just this amendment but in all the other companion policy-making authorities. The reason for that was, we wanted to clarify that we don't expect employees to, for example, physically intervene in dangerous situations where they would be putting themselves at risk. What we will do is, in the policy-making authority that was just set out, clarify what the expectations are. For example, if we're talking about homophobic harassment or verbal sexual harassment, in those sorts of instances we would require that there be simple interventions, such as, "We do not use such language in this school; would you please try that over again?" But when it comes to inserting yourself in the middle of a knife fight, we don't expect employees to do that. That's the purpose of having the policy-making authority: so that we can sort out what responses are appropriate in what situations, understanding that it isn't strictly always intervening and getting yourself in the middle.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals. We're still on government motion 4. Any further comments, questions? Those in favour of government motion 4? Those opposed? Government motion 4 carries.

Shall section 1, as amended, carry? Carried.

Government motion 7: Ms. Sandals.

Mrs. Liz Sandals: I move that clause 316(1)(c) of the act, as set out in section 4 of the bill, be struck out and the following substituted:

"(c) governing actions to be taken by a principal who does not notify a parent or guardian of the pupil because of the circumstances described in subsection 300.3(3);

"(d) setting out circumstances in which employees are not required to respond under section 300.4."

In the first of those clauses, clause (c), we're expanding the regulatory authority so that we can set out more clearly, if a principal does not notify the parents, what it is that the principal is actually required to do. We can set that out in regulation. The (d) part of it is simply

taking something that was already in the bill and, once again, replacing the word "intervene" with "respond."

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals. Any further comments on government motion 7? Seeing none, we'll proceed to the vote. Those in favour of government motion 7? Those opposed? Government motion 7 is carried.

Shall section 4, as amended, carry? Carried.

With the committee's permission, we'll consider, en bloc, sections 5 and 6 since we've not received any

amendments to date. Those in favour of sections 5 and 6? Carried.

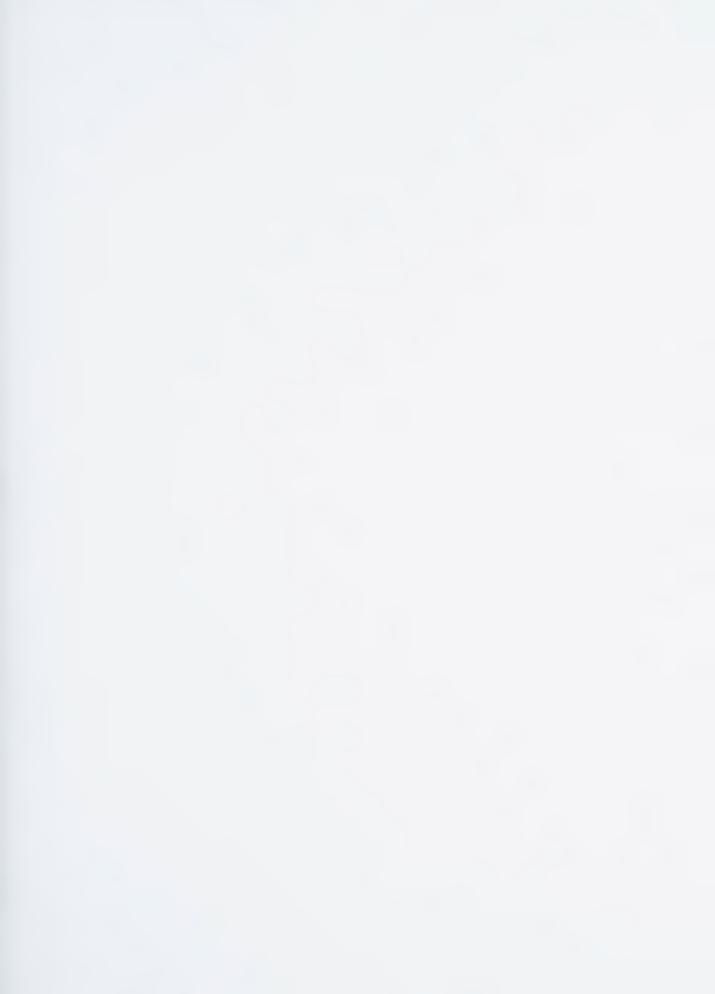
Shall the title of the bill carry? Carried.

Shall Bill 157, as amended, carry? Carried.

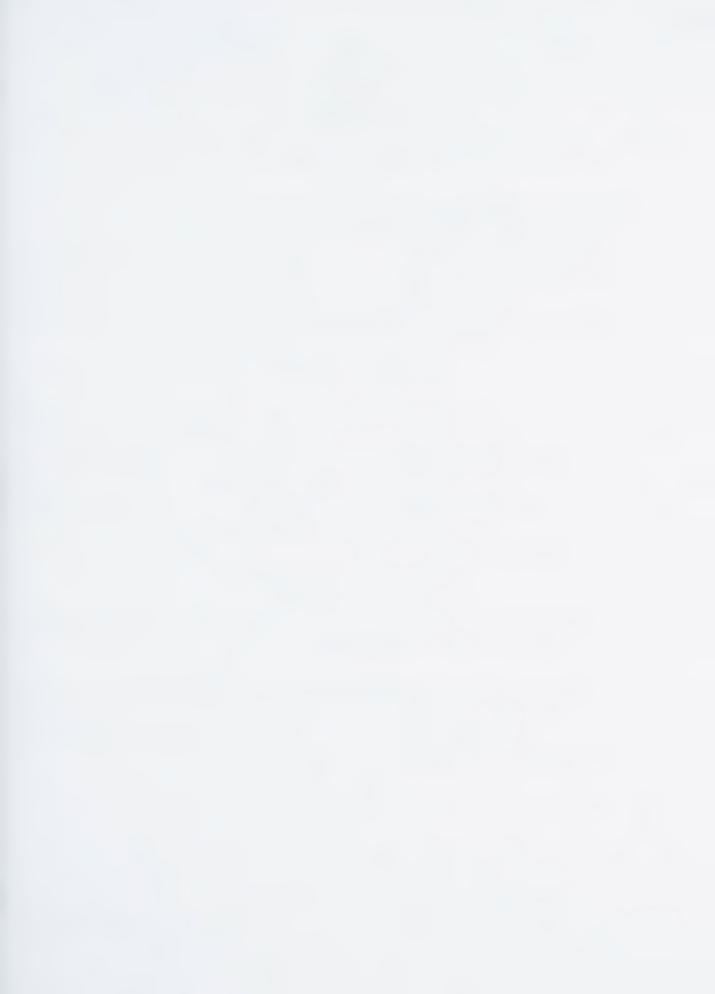
Shall I report the bill, as amended, to the House? Carried.

Is there any further business before this committee? No. Committee adjourned.

The committee adjourned at 1640.







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Monday 28 September 2009

Standing Committee on Social Policy

Regulated Health Professions Statute Law Amendment Act, 2009

Assemblée législative de l'Ontario

Première session, 39^e législature

Journal des débats (Hansard)

Lundi 28 septembre 2009

Comité permanent de la politique sociale

Loi de 2009 modifiant des lois en ce qui concerne les professions de la santé réglementées

Chair: Shafiq Qaadri Clerk: Katch Koch Président : Shafiq Qaadri Greffier : Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Monday 28 September 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Lundi 28 septembre 2009

The committee met at 1400 in committee room 1.

APPOINTMENT OF SUBCOMMITTEE

The Chair (Mr. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la politique sociale. Colleagues, I call to order this meeting of the Standing Committee on Social Policy. Before I begin substantive business, I would like to welcome three new committee members. They are MPP Sophia Aggelonitis, MPP Linda Jeffrey and MPP Carol Mitchell, entirely by coincidence all from the government side.

I'd now like to welcome Mrs. Jeffrey and invite her to please move the subcommittee amendments.

Mrs. Linda Jeffrey: I move that the subcommittee on committee business be appointed to meet, from time to time, at the call of the Chair or at the request of any member thereof, to consider and report to committee on the business of the committee, that the presence of all members of the subcommittee is necessary to constitute a meeting, and that that subcommittee be composed of the following members: the Chair as Chair, Ms. DiNovo, Mrs. Mitchell and Mrs. Witmer, and that substitution be permitted on the subcommittee.

The Chair (Mr. Shafiq Qaadri): Thank you. Is there any discussion on this subcommittee report? Seeing none, I'll take it as adopted as read.

SUBCOMMITTEE REPORT

The Chair (Mr. Shafiq Qaadri): I would now invite Ms. Mitchell to please enter into the record the draft report of that subcommittee report.

Mrs. Carol Mitchell: Your subcommittee on committee business met on Tuesday, June 2, 2009, to consider the method of proceeding on Bill 179, An Act to amend various Acts related to regulated health professions and certain other Acts, 2009, and recommends the following:

- (1) That the committee meet for the purpose of holding public hearings on Monday, September 28, and Tuesday, September 29, 2009, in Toronto.
- (2) That the clerk of the committee, with the authority of the Chair, place an advertisement for one day about the public hearings in major Toronto dailies before Monday, September 7, 2009;

- (3) That the clerk of the committee post information regarding the hearings on the Ontario parliamentary channel and the Legislative Assembly website;
- (4) That interested people who wish to be considered to make an oral presentation on Bill 179 should contact the clerk of the committee by Monday, September 21, 2009, at 5 p.m.;
- (5) That the clerk of the committee provide a list of all interested presenters to the subcommittee following the deadline for requests;
- (6) That the length of presentations for witnesses be 15 minutes for groups and 10 minutes for individuals;
- (7) That the deadline for written submissions be Friday, September 25, 2009, at 5 p.m. and that presenters be allowed to submit follow-up information to the committee by Tuesday, September 29, 2009, at 5 p.m.;
- (8) That the research officer provide the following to the committee:
- —press releases from the colleges prior to the start of the hearings;
- —summary of recommendations as complete as possible;
- (9) That the deadline for filing amendments to the bill with the clerk of the committee be Friday, October 2, 2009, at 5 p.m.;
- (10) That clause-by-clause consideration of the bill be scheduled for Tuesday, October 6, 2009;
- (11) That the clerk of the committee, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements to facilitate the committee's proceedings.

I would move that report.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Mitchell. Are there any questions, concerns or further amendments to be presented? Ms. Elliott.

Mrs. Christine Elliott: Thank you, Chair. I move that the report of the subcommittee dated Tuesday, June 2, 2009, be amended as follows:

- (a) By adding the date of "Monday, October 5, 2009" for the purpose of public hearings in paragraph 1;
- (b) By striking out paragraph 6 and replacing it with "That the length of presentations for witnesses be 10 minutes";
- (c) By striking out paragraph 7 and replacing it with "That the deadline for written submissions be Monday, October 5, 2009, at 5 p.m.";

- (d) By striking out "Friday, October 2, 2009" in paragraph 9 and replacing it with "Wednesday, October 14, 2009";
- (e) By striking out "Tuesday, October 6, 2009" in paragraph 10 and replacing it with "Monday, October 19, 2009."

The Chair (Mr. Shafiq Qaadri): Should the amendments carry? Carried.

Shall the subcommittee report, as amended, carry? Carried.

REGULATED HEALTH PROFESSIONS STATUTE LAW AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT DES LOIS EN CE QUI CONCERNE LES PROFESSIONS DE LA SANTÉ RÉGLEMENTÉES

Consideration of Bill 179, An Act to amend various Acts related to regulated health professions and certain other Acts / Projet de loi 179, Loi modifiant diverses lois en ce qui concerne les professions de la santé réglementées et d'autres lois.

The Chair (Mr. Shafiq Qaadri): We'll now move to the presentations. I'd first of all like to welcome all the members and the various submitters, presenters and those who are here. As well, many have submitted written reports.

We are trying to set up an overflow room, as we have, it seems, standing room only. Just to inform you of the protocol: All presenters will have 10 minutes in which to make their presentation, which will be militarily enforced with precision. Any time remaining within those 10 minutes will be distributed, if any are remaining, evenly amongst the parties for questions.

ONTARIO ASSOCIATION OF SOCIAL WORKERS

The Chair (Mr. Shafiq Qaadri): I would now invite our first presenters to please come forward. Ms. Davies, the executive director of the Ontario Association of Social Workers, if you'd please come forward and be seated. If you do have any colleagues—and just the protocol for everyone else—please do introduce yourselves on an individual basis for the purposes of Hansard recording. We'll obviously be pleased to distribute your written materials.

Ms. Davies, I invite you to begin now.

Ms. Joan MacKenzie Davies: Thank you. Good afternoon. The Ontario Association of Social Workers, also known as OASW, appreciates this opportunity to participate in the public consultations related to Bill 179.

OASW is a bilingual, professional membership association for social workers in the province, and our mandate is to speak on behalf of the interests and concerns of the profession.

The issues I will be commenting on today relate to ensuring that appropriately qualified social workers can use the title "psychotherapist"; and removal of restrictions on use of the title "Doctor" by social workers with doctorates when providing health care services.

Firstly, I wish to state that OASW strongly supports the proposed amendment to the Social Work and Social Service Work Act, 1998, to add "psychotherapy" title as outlined in section 47.2, thus enabling social work members of the Ontario College of Social Workers and Social Service Workers who are authorized to perform the controlled act of psychotherapy to use the title "psychotherapist," either by using the restricted title "social worker" after "psychotherapist" or by identifying themselves as a member of our regulatory college.

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Additionally, we support the proposed amendment to the Regulated Health Professions Act, 1991, which grants similar access to the title "psychotherapist" to qualified members of the College of Nurses of Ontario, the College of Occupational Therapists of Ontario, the College of Physicians and Surgeons of Ontario and the College of Psychologists of Ontario. These amendments, we believe, serve the public interest by removing confusion on the part of the public about who is qualified to perform these services and, by assisting the public, identify the full range of professionals who have the requisite qualifications, training and skills to provide psychotherapy. Moreover, the amendments create an even playing field for the professions providing this service.

OASW also maintains that interprofessional collaboration and the public interest would be served by having representation from the existing regulatory colleges mentioned previously serve on the transitional council of the new college of psychotherapists and registered mental health therapists.

Additionally, OASW strongly encourages the standing committee to take this opportunity to expand access to use of the title "Doctor" by removing current restrictions on this title. The title "Doctor" is currently restricted to the following professions when delivering health care services: physicians, dentists, optometrists, chiropractors, psychologists and, more recently, naturopaths. All other professions with earned doctorates are denied use of this title when providing health care services in Ontario.

We believe that the proposed amendments to the RHPA and the Social Work and Social Service Work Act related to use of the title "psychotherapist" provide a useful template for broadening access to use of the title "Doctor" by members of regulated professions. We maintain that failure to recognize duly qualified social workers as doctors does not properly reflect the skill level of these health care providers.

With the growing trend across professions for professionals to seek advanced academic qualifications, thus transferring knowledge from clinical research to clinical practice, this outdated restriction casts Ontario as out of step with other jurisdictions, including other provinces in Canada, the United States, the United Kingdom, con-

tinental Europe, Australia and New Zealand. The restriction discourages social workers with doctorates from moving to Ontario from other jurisdictions and deprives the public of the important services they provide. Furthermore, it places Ontario at a significant disadvantage when attempting to attract highly qualified experts in the health care field.

The Health Professions Regulatory Advisory Council, HPRAC, after extensive consultations, stated in their report entitled Regulation of Health Professions in Ontario: New Directions, which was published in April 2006, that this issue "is a social, and not a health-related matter," and concluded that this restriction should be repealed.

I'd like to take this time to thank the standing committee for the opportunity to provide feedback on the issue of use of the title "psychotherapist" and our desire to see this committee take the opportunity to expand access to use of the title "Doctor" by regulated professionals so qualified when providing health care services. Thank you.

The Chair (Mr. Shafiq Qaadri): We have about a minute or so per side, beginning with the PC caucus. Ms. Elliott.

Mrs. Christine Elliott: I don't have any questions; it's very clear. Thank you very much for your presentation.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Elliott. Madame Gélinas?

M^{me} France Gélinas: It's clear to me, too.

The Chair (Mr. Shafiq Qaadri): Thank you. To the government side. Mr. Balkissoon.

Mr. Bas Balkissoon: Thank you very much for your presentation. Can you just add a little bit as to how acquiring a doctor's title will really change the benefits to a patient?

Ms. Joan MacKenzie Davies: Well, as in use of the title "psychotherapist," currently it is only those professions which have access to the title "Doctor" that are able to indicate their advanced academic standing to clients they are serving and to the general public. All other professions who have earned doctorates are unable to reflect to the public what their advanced academic standing is, and we believe that this is discriminatory and really is not in the public interest.

Mr. Bas Balkissoon: Okay, thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Balkissoon, and thanks to you, Ms. Davies, for your presentation and presence today.

ONTARIO ASSOCIATION OF NATUROPATHIC DOCTORS

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenters: Of the Ontario Association of Naturopathic Doctors, Ms. Dantas, CEO, and Ms. Baron, chair of the board. You are welcome. Please be seated. You've seen the protocol: 10 minutes in which to make

your presentation. I would respectfully invite you to begin now.

Ms. Ruth Anne Baron: Good afternoon. My name is Ruth Anne Baron. I'm a naturopathic doctor and the past chair of the Ontario Association of Naturopathic Doctors. Joining me is Alison Dantas, the CEO of the association. The Ontario Association of Naturopathic Doctors is the professional association representing Ontario's registered NDs.

Our purpose for appearing here today is to communicate to this committee our recommendations for amendments to Bill 179. These amendments are specifically related to the Naturopathy Act in order to address short-comings that will result in a loss of patient care if they're not made. These amendments also clearly support the goal of Bill 179 to ensure that our profession can deliver more health care services that we are already educated and competent to provide, improving patient access to primary care in the process. These amendments make sense and will not require funding from the government.

We've welcomed the opportunity to meet with many of you in recent weeks. We met with MPPs to show how naturopathic doctors are already contributing to a healthier Ontario. We also discussed the importance of removing barriers to our profession: working to the full extent of our qualifications. Our patients want this, and it's clear that, if permitted, naturopathic doctors will have the scope they need to address some of the largest challenges facing the health care system, using safe and effective natural therapies. Recent polling done by Innovative Research in 2006 shows that over 40% of Ontarians will seek a naturopathic doctor in the next few years, so it's clear that the people of Ontario want this.

We were pleased when HPRAC recommended needed changes to the Naturopathy Act but disappointed we were left out of this legislation despite HPRAC's very clear recommendations. We're here today to correct this situation and properly capture the full scope of practice of the profession under the Naturopathy Act.

If required amendments are not made to Bill 179, patients of naturopathic doctors will lose care they are currently able to receive from their ND under current legislation and the profession will fall further behind in the scope of practice of the profession in other regulated jurisdictions.

Our written submission provides much more detail on the seven years of extensive training required to become a naturopathic doctor, how we've been regulated in Ontario for over 80 years, and our unique approach to health care using natural therapies and natural substances. Ontario's 900 naturopathic doctors practise a unique and comprehensive form of medicine which helps our patients to live healthier lives and has resulted in a growing demand for our services.

The government committed to us, prior to the Naturopathy Act, that its goal was to ensure that we moved into the RHPA with our scope of practice intact. We remain focused on that objective as we prepare for the transition process to get under way. We'd appreciate your support in making these needed changes, which will preserve our current scope of practice and the treatment options available to our patients. More detail on these required amendments, including specific wording of the amendments, is provided in our written submission.

I would like to summarize for you the amendments to the Naturopathy Act that naturopathic doctors are looking for through Bill 179 and to share why these are critical to the profession practising to their full training and expertise.

The first amendment we are seeking is to include the full controlled act of prescribing, dispensing, selling and compounding in the Naturopathy Act. First and foremost, this is about maintaining access to the natural substances that are essential to naturopathic practice. The problem is that more and more natural substances are being moved onto restricted schedules. This can be for good reasons, where patients shouldn't be self-diagnosing and selfmedicating. However, without prescribing authority, preventing public access also prevents access for NDs and their patients. Some critical substances have already been lost, and this trend is expected to continue. Our patients are coming to us because we are the experts in the safe use of these natural substances. We have extensive training in their use and in avoiding interactions with other drugs.

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Without this controlled act, we will also lose the current exemption we now have to compound, dispense and sell when we move under the Naturopathy Act. HPRAC understands this and has recommended in three different reports that NDs be awarded the full controlled act to ensure ongoing access to substances that are integral to naturopathic medicine and allow naturopathic doctors to play a larger role in primary care. Prescribing authority has just been awarded to naturopathic doctors in British Columbia and is critical to the profession here in Ontario.

Next, I want to discuss diagnosis. This controlled act was awarded in the Naturopathy Act but it was done in a way that will pose a problem for patient care. The controlled act we were awarded is "communicating a naturopathic diagnosis," but this could create a misunderstanding that somehow our diagnosis is different from other professions, and that's just not true. Our training is to communicate the same kind of diagnosis as other professions. We have authority to communicate a diagnosis under our current legislation. Naturopathic doctors utilize the same ICD diagnostic codes used by other professions who provide a diagnosis, so there is really no difference in the diagnosis being provided to a patient. We want to make sure that the terminology does not create any misunderstanding between professions.

It would be a problem if the current wording of a controlled act created the impression that a diagnosis from a naturopathic doctor is somehow different than a medical diagnosis. Most importantly, this will create a new and potentially significant barrier to collaboration on behalf of our patients. HPRAC has recognized this prob-

lem and, as a result, recommended that the controlled act be changed from "communicating a naturopathic diagnosis" to simply "communicating a diagnosis."

The next amendment we are seeking is more certainty that naturopathic doctors will continue to be able to do in-clinic lab testing for their own patients. The authority that is supposed to exist, provided at the same time as the Naturopathy Act, is not very clear. What we are seeking is an exemption similar to the one that already exists for MDs doing testing for their own patients. As well, we will need authority to be able to send our blood work requests and other samples to Ontario laboratories rather than having to continue to send them out of province. Our written submission details the importance of access to lab testing for patient care, as well as our training to properly order and interpret these test results.

Similarly, we are seeking the authority to order diagnostic ultrasound for our patients. Again, this amendment was recommended by HPRAC. Naturopathic doctors clearly have the training, and the results are essential to provide a comprehensive diagnosis and to monitor the progress of the treatment. Right now, we have to send many patients to their MDs for simple diagnostic ultrasound, but this would be unnecessary if we could order the testing. There is no expectation that these tests will be funded by the health care system.

Finally, we're seeking that a change to the name of our future regulatory college should be in place. Calling it the College of Naturopaths of Ontario creates potential confusion because the initials "CNO" are the same as the College of Nurses of Ontario. As well, the profession is known as naturopathic doctors by patients and the public, and this is the designation assigned to the profession under the Naturopathy Act. We believe, as a result, that the name should be changed to the CNDO.

We believe that our amendments will strengthen Bill 179, increase the contribution we can make to the health care system and enhance our ability to provide safe and effective patient care. Our written submission includes more details and proposed wording.

Thank you for the opportunity to present to this committee today. I want to thank members of all three parties for the support you've shown naturopathic medicine over the years. I'd welcome the chance to answer any questions you may have.

The Chair (Mr. Shafiq Qaadri): We really have 20 seconds per side. Madame Gélinas?

M^{me} France Gélinas: I go first? I was surprised to see here that for ordering diagnostic ultrasounds, you said "no expectation that these tests will be funded by the health care system." You would use the private labs but have the patient pay for them?

Ms. Ruth Anne Baron: Yes, that would be the understanding.

The Acting Chair (Mr. Shafiq Qaadri): With apologies, I will have to intervene; really, 20 seconds, please. Government side, Mr. Balkissoon.

Interjection.

The Chair (Mr. Shafiq Qaadri): Thank you. To the PC side, Ms. Witmer.

Mrs. Elizabeth Witmer: Thank you so much. What would you see as your most pressing amendment?

Ms. Ruth Anne Baron: I think the controlled act of

prescribing is the most pressing amendment.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Witmer, and thanks to you, Ms. Dantas and Ms. Baron, for your deputation on behalf of the Ontario Association of Naturopathic Doctors.

COLLEGE OF MIDWIVES OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter, Ms. Adams, the registrar and CEO of the College of Midwives of Ontario, and colleagues. As I've mentioned, please do introduce yourselves individually, as we directly attribute remarks in the recording of Hansard. I'll just give you a moment to settle.

I'd invite you to officially begin now.

Ms. Deborah Adams: Thank you for this opportunity to appear before the committee today. I'm Deborah Adams, registrar of the College of Midwives of Ontario. With me are Robin Kilpatrick, our deputy registrar and a former midwife who actually participated in drafting the legislation that saw midwives regulated, as well as Julie Maciura, our legal counsel.

We intend today to focus our presentation on the midwifery-specific amendments, but I would like to note that we identified issues with the more general amendments in our written submission. I'd also like to note that we are signatories on the Federation of Health Regulatory Colleges of Ontario's submission and our views are represented there.

While the college very much supports the bill, we do feel strongly that it hasn't gone far enough to achieve its stated goals of supporting the province's health human resource strategy, developing much-needed new health care provider roles or enabling health professionals to work to their full scope of practice. There's an increasingly acute shortage of maternity care providers in this province and this bill affords us the opportunity to take significant steps towards addressing this growing scarcity of resources. Without amendments, though, Bill 179 will not have the hoped-for results for the people of Ontario, particularly for women who choose or who would like to be able to choose midwifery.

The first piece of the bill that we'd like to bring to the committee's specific attention is the proposed amendment to the Laboratory and Specimen Collection Centre Licensing Act. The bill proposes an amendment that will exclude a place where a dietitian provides services. The same exclusion for midwives, who provide a significant amount of care to women in their homes, would provide clear legislative authority for important point-of-care access for midwifery clients. This access supports the safety of continuity of care and is a more efficient use of the health system, since it provides one-stop shopping for women who can have tests done in their home by their primary care provider.

Ms. Robin Kilpatrick: Our college has been advocating for changes to the regulation-making process—

The Chair (Mr. Shafiq Qaadri): I'd invite you to introduce yourself, please.

Ms. Robin Kilpatrick: I'm sorry. I'm Robin Kilpatrick, the deputy registrar for the College of Midwives of Ontario.

Our college has been advocating for changes to the regulation-making process, particularly with respect to drug regulations, for the past five years. In 2004, one of the only two medications midwives were authorized to use to treat post-partum hemorrhage became unavailable in Canada. This shortage put the public at risk because midwives had no independent access to a second-line medication, should the first prove ineffective. We worked with the ministry to expedite an amendment to add another medication to the midwifery drug regulation. This took one year. This emergency situation highlighted for us the need for a more responsive and timely process with respect to regulations.

While we acknowledge that amendments have been proposed to alter the regulation-making process with respect to drugs, we remain concerned that this process will not improve sufficiently.

The amendment-making process must enable midwives to access the most effective medications as they become available. For this reason, in our submission, we proposed a framework that would allow midwives to prescribe and use classes or categories of drugs, rather than a limited list. This will allow midwives to provide the safest care according to the accepted standard of care, and provides options when availability is an issue. We are not convinced or confident that the proposed changes will deliver, and would ask that this piece of the legislation be reviewed with the goal of ensuring that it provides the needed degree of responsiveness.

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Every woman in Ontario, regardless of her care provider, choice of birthplace, or geographic location is entitled—and should expect—access to the same quality and safety of maternity services. The current midwifery scope of practice does not authorize midwives to work to their full competency or to provide the full complement of services that should be available through a primary maternity care provider. In effect, the restrictive scope of midwifery practice denies this entitlement to women who choose to receive care from a midwife in Ontario.

We have proposed amendments to create an extended class of midwife who can provide care that is not currently available in many underserviced communities.

The limited amendments that have been proposed to the Midwifery Act, such as communicating a diagnosis and the controlled act of intubation, will support midwives in their role as primary maternity care providers. However, there are a number of other areas of the scope of practice that also need to be amended in order to create the best-case scenario for women by allowing midwives to meet the primary care needs of their communities, to have access to the most up-to-date best clinical practices and to bring the regulation of midwifery in line with the other provinces where the profession is regulated.

We thank you very much for the opportunity to make this submission to the committee. We look forward to working with you to enhance public safety for women in this province. We'd be pleased to answer any questions you might have.

The Chair (Mr. Shafiq Qaadri): Thank you. We have about 90 seconds per side, beginning with Mr. Balkissoon of the government.

Mr. Bas Balkissoon: I'll pass, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Balkissoon. To the PC side, Ms. Elliott.

Mrs. Christine Elliott: Just a quick question: Do you have any specific recommendations with respect to these amendments that you've sent around. I just don't see them in your presentation.

Ms. Deborah Adams: Related to the scope of practice?

Mrs. Christine Elliott: Well, the several issues that you've raised.

Ms. Deborah Adams: Related to the scope of practice, in our submission to HPRAC and also in our written submission we highlighted the need for an extended class of midwife to provide services in underserviced communities, and also specific changes to both the process for amending the drug regulation and access to classes and categories of drugs for midwives, as opposed to a prescriptive list.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Elliott. Madame Gélinas.

M^{me} France Gélinas: I have reviewed quite a few and already I'm a little bit confused, so I just want to make sure—when HPRAC did your review, did they put forward this idea that you could prescribe within classes of medication, or is this something that is new?

Ms. Deborah Adams: We've been asking for classes and categories for some time and HPRAC in fact did support the idea of classes and categories for midwives in their response.

M^{me} France Gélinas: So in their response, they supported it and then when the ministry put the bill forward, it got dropped again?

Ms. Deborah Adams: Correct.

M^{me} France Gélinas: Okay, thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Gélinas, and thanks to you, Ms. Adams and Ms. Kilpatrick and your colleague, from the College of Midwives of Ontario.

INDEPENDENT PHARMACISTS OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenters to please come forward, representing the Independent Pharmacists of Ontario. Welcome. We'll be pleased to distribute that for you. I'd invite you to begin now.

Ms. Tina Langlois: Good afternoon, ladies and gentlemen of the committee. My name is Tina Langlois and I appear before you on behalf of the Independent Pharmacists of Ontario. First of all, I bring greetings

from Mr. Ben Shenouda, who unfortunately was unable to be here. He's the president of IPO and would like to have attended, but unfortunately, time did not allow.

IPO is pleased to have an opportunity to make a submission regarding Bill 179. Generally speaking, IPO is very supportive of the thrust of Bill 179 but has two specific concerns that it wishes to address to the committee today. One is related to the proposed amendments to the Drug and Pharmacies Regulation Act which would allow remote dispensing, and the other related to the amendments to the Ontario Drug Benefit Act, which propose to allow for different classes of pharmacies as it relates to markups and dispensing fees.

First of all, to tell you a little bit about who IPO is, IPO is a non-profit organization that was created to represent and advocate on behalf of Ontario's independent pharmacists. Independent pharmacies make up about 40% of the pharmacies in Ontario. They are often family-owned and tend to be prescription-focused. These independent pharmacies provide quality, accessible, community-based patient care to patients across the province, particularly in those areas that are underserviced by primary health care providers.

The IPO believes strongly that every patient in Ontario is entitled to quality pharmacy care, which they believe includes access to a professional pharmacist who is aware of their health condition and concerns, who has a relationship with their physician or physicians and can evaluate and monitor their medication profile and provide them with information and recommendations.

The IPO fears that unless Bill 179 is amended, some patients in the province may in fact be denied access to this vital pharmacy care and will instead be subject to fragmented, less-than-optimal service that will negatively impact their health and eventually increase the costs to the overall health care system.

As I said before, the IPO is generally very supportive of the thrust of Bill 179, particularly as it relates to expanding the role of health professionals, making the highest and best use of each health professional within the system. The IPO is particularly pleased to see that the role of pharmacists is expanding through Bill 179 and that pharmacy technicians will be regulated through this bill as well. We are, however, concerned about two specific aspects of the bill, which I will now detail.

Section 8 of Bill 179 proposes to make amendments to the Drug and Pharmacies Regulation Act to allow for remote dispensing. It should be noted that at this point in time in Ontario, in order to dispense prescriptions, a pharmacy must have a pharmacist present. The IPO believes that this safeguard is important to ensure patient care and patient safety. Unfortunately, there is no definition in Bill 179 about what exactly remote dispensing will involve or what kind of remote dispensing will be permitted. However, the IPO is aware that there are drug dispensing machines in existence that have been piloted in places in the province, and it is with regard to these machines that we are particularly concerned. Needless to say, professional pharmacists are somewhat shocked that

in a province that banned the dispensing of cigarettes from vending machines, any proposal would be put forward to dispense prescription medications in this fashion.

The proposed amendments were introduced very quickly, with very little consultation and, in our opinion, research. The IPO is not aware of any shortage of pharmacies in the province that would lead to a pressing need for remote dispensing. However, if such a need is shown to exist, we believe that it would be infinitely more appropriate to establish satellite dispensing locations that are under the direct supervision of an accredited pharmacist and hopefully under the direct supervision of a regulated health care professional, perhaps a regulated pharmacy technician, for instance. We would suggest that further study of remote dispensing is required before making what we believe is a fairly drastic move in terms of the distribution of prescription medication. We would encourage the research to include the experience of other jurisdictions that currently permit remote dispensing and any concerns or patient safety issues that have arisen in those jurisdictions.

The IPO is very concerned that the proposed amendments contain very little substantive information, with most of the detail proposed to be set out in regulation to be developed at a future date. As you know, regulations are not developed with the type of openness and consultative process that amendments to legislation are, and this causes us some concern. If remote dispensing is in fact to be contemplated, the specifics need to be clearly set out in legislation, particularly those elements that are important to ensure patient safety and public protection. The IPO feels that there is just too little detail in the proposed amendments to provide comfort and too many opportunities for unintended negative consequence to occur as a result of these amendments.

Pharmacists take their profession and their professionalism very, very seriously. The IPO does not believe that drug dispensing machines reflect the values of professional pharmacists or, frankly, those of the health care system as it's been transformed, namely interprofessional collaboration and patient-centred care. Bill 179 seeks to expand the role of many health care professionals, granting prescribing authority for the first time to some and expanding the prescribing authority of others. The IPO believes that at a time when we are expanding prescriptive authority for more health care professionals, the role of pharmacists becomes even more important in the overall health care team.

Pharmacy in general as a profession has evolved a great deal in terms of cognitive patient care, and frankly, the IPO believes that automated drug dispensing machines are a step backwards. The relationship between patient and pharmacist is an important one to the overall health of a patient and it should be encouraged and nurtured, not fragmented.

Remote dispensing is, in our opinion, no substitute for traditional pharmaceutical care and can provide only partial service at best. As you might imagine, a machine cannot possibly hold all the various amounts, dosages, dosage forms etc. that a patient might require. There will be a selection, probably of the most popular. Unfortunately, this means that patients who avail themselves of these machines will also have to have another, separate relationship with a pharmacist in order to obtain these other medications, or in fact obtain any compounded medication. Patients have long been encouraged to establish a relationship with one pharmacy in order to improve their overall health care. We believe that this remote dispensing framework will not allow patients to in fact do that.

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The machines will also not give patients access to over-the-counter medication or, frankly, the valuable advice and recommendations that pharmacists make every day that are in no way associated with the sale of a drug or the dispensing of a prescription.

The IPO is concerned that allowing remote dispensing without further detail or research will dilute and fragment patient care and may negatively impact patient health and safety. We're simply not convinced that this type of dispensing arrangement is necessary or in fact prudent at this time.

It's important to remember the role that face-to-face patient-pharmacist interaction plays in determining whether or not a medication is appropriate for a patient. The way a patient presents, their demeanour, their mobility, their ability to speak, the manner in which they hold themselves: all are clues that pharmacists use every day to determine the appropriateness of medication. The IPO is concerned that video interface, assuming that it is even required—because we're not clear whether that would be required—and working correctly, simply will not permit the same level of interaction and connection between the patient and pharmacist, and that patient care will suffer as a result.

Finally, we are concerned that by promoting machines instead of health care professionals within communities, we are in fact fragmenting and diluting the care that is provided across the province.

If remote dispensing is in fact deemed necessary, it should only be permitted in areas where there are currently no community pharmacies and should be discontinued if a community pharmacy is opened, this just reflecting the fact that a community pharmacy with a health professional available to serve the members of that community is far preferable to a machine that dispenses prescriptions.

The Chair (Mr. Shafiq Qaadri): You have 30 seconds left, Ms. Langlois.

Ms. Tina Langlois: I'm sorry. If I could just move, then, to the amendments to the Ontario Drug Benefit Act: We are specifically concerned about section 19, which proposes that regulations could be brought in to designate classes of pharmacies or pharmacy operations. We are concerned that there should only be one class of pharmacy in Ontario serving the patients of Ontario, and that is first-class. Therefore, we would recommend that these amendments be removed from the legislation.

I would encourage the committee to view the IPO's YouTube video which is linked to this submission and which sets out our concerns in greater detail.

The Chair (Mr. Shafiq Qaadri): Thank you very much, Ms. Langlois, for your presentation on behalf of the Independent Pharmacists of Ontario.

BOARD OF DIRECTORS OF DRUGLESS THERAPY—NATUROPATHY

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter, Ms. Moore, executive director of the Board of Directors of Drugless Therapy—Naturopathy. If you are present, yourself and colleagues, I'd invite you to please come forward. If you have any written materials for distribution, we'll be happy to do that as well. As mentioned, please do identify yourselves for the purposes of Hansard recording. I invite you to begin now.

Ms. Angela Moore: Thank you, Chair. My name is Angela Moore. I'm a naturopathic doctor and the executive director for the Board of Directors of Drugless Therapy—Naturopathy, the regulatory board for the profession in Ontario. With me, from Port Hope, is board member Mary-Ellen McKenna, also a naturopathic doctor.

We very much appreciate the opportunity to appear before the committee. I'll be as brief and concise as I can. Our written submission with the details of our response to Bill 179 and our proposal with respect to section 17 has been provided to the committee clerk.

By way of background, there are nearly 1,000 naturopathic doctors who have met the requirements to practise in Ontario and who are currently registered with the board. Nearly all are graduates of the four-year program offered by the Canadian College of Naturopathic Medicine, located at Sheppard and Leslie in Toronto. Most also have an undergraduate degree in the sciences.

Our profession is in transition. Naturopathic doctors have been regulated in Ontario since the 1920s, first under the Medicine Act and subsequently under the Drugless Practitioners Act. In 2007, legislation was passed that will move regulation of the profession to the RHPA. We understand that the transitional council will soon begin work on the foundational regulations, bylaws and standards of practice that will enable the college of naturopathy to take over regulation of the profession. We expect the transition to the RHPA and the opening of the new college to take 18 to 24 months. Throughout the transitional period, the Board of Directors of Drugless Therapy—Naturopathy will continue to regulate naturopathic doctors under the Drugless Practitioners Act as before.

The ministry has already introduced one amendment to the Naturopathy Act in section 17 of Bill 179. It closes a gap that posed a significant concern for the board. This amendment ensures that the new college will be able to investigate and prosecute complaints that relate to conduct that occurred prior to proclamation while the practitioner was registered with the board, but that only

came to light after proclamation. This amendment is clearly very important to protect the public interest. We are grateful to the ministry for introducing it and we urge the committee to support it as well in order to ensure seamless and effective regulation of the profession during the transition.

We were particularly anxious to appear before the committee, however, because we believe an additional amendment to the Naturopathy Act is critically important to the public interest. The OAND has already spoken to this as well. We ask for an amendment that authorizes naturopathic doctors to perform the RHPA-controlled act of prescribing, dispensing, selling or compounding a drug as defined in subsection 117(1) of the Drug and Pharmacies Regulation Act. We need access to this controlled act in order to maintain—and I emphasize maintain, not expand—the naturopathic scope of practice as practised historically under the Drugless Practitioners Act, and thereby continue to provide patients with the same treatments they have had and expect to continue to have from their NDs.

This may prompt the question, why would naturopathic doctors who have been regulated under the Drugless Practitioners Act need to prescribe drugs? A full discussion can be found in our written submission. The simple explanation, though, is this: Over the past several years, the federal government has moved a number of natural substances that were obtained over the counter on recommendation by a naturopathic doctor to restricted schedules that now require a prescription. This includes substances NDs are uniquely qualified to use, such as vitamins A, D and niacin over certain daily dosages and higher-risk botanical medicines such as rauwolfia and colchicum. We expect that this trend will continue and we actually support it because it ensures that only those who are competent to use these substances have access to them. Access to these substances by health care practitioners now requires prescribing authority under provincial legislation; hence our request for access to the "prescribing" controlled act.

I thought it was important to mention also that our request does not seem to be particularly controversial. Access to the controlled act has been recommended by HPRAC twice. We have consulted with a number of other professions and with the Ontario Medical Association, all of whom have indicated they do not oppose our request. We don't know of any stakeholder who has raised concerns about it. It is also our understanding that the Ministry of Health and Long-Term Care has come to recognize that access to the controlled act is really the only way to address the problem I've described, and that the ministry and other stakeholders have come to appreciate this fully.

Accordingly, we ask for the addition of the controlled act of prescribing, dispensing, selling or compounding in the Naturopathy Act, as detailed and explained in our written submission, to ensure continuity of the scope of practice of the naturopathic profession in Ontario.

Finally, we're also asking for this committee to use Bill 179 to correct an anomaly in the Naturopathy Act, 2007. This correction was also recommended by HPRAC. It relates to authorized act 5 in subsection 4(1) of the act, relating to communicating a diagnosis. We're asking for the removal of the adjective "naturopathic" before "diagnosis" and also removal of the phrase "that uses naturopathic techniques."

The purpose of these amendments is to put our profession on the same basis as other professions that are authorized to perform this particular controlled act and also to remove the risk that the current wording would be interpreted as being more limited or limiting than what NDs currently do in terms of diagnosis.

Thank you for your attention. I welcome your questions.

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The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Moore. About a minute per side, beginning with Madame Gélinas.

M^{me} France Gélinas: When HPRAC made its recommendation toward the prescribing, was it open prescribing or was it limited to classes? I can't see an ND ever prescribing a narcotic, but am I wrong?

Ms. Angela Moore: HPRAC's recommendations in terms of prescribing were to classes and categories and to a specific list of additional substances. The board at this point is only asking for access to substances that would maintain the existing scope of practice, so that would be those kinds of substances that NDs have always prescribed for patients that have been moved to restricted lists.

M^{me} France Gélinas: But that's not what you have in your recommendation. Your recommendation makes it look like open prescribing; you have "prescribing, dispensing, selling...."

Ms. Angela Moore: The wording would include—sorry, I can't remember specifically. It's in the written submission, but it would be as set out in regulation.

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Gélinas. To the government side, Mr. Balkissoon.

Mr. Bas Balkissoon: Just to carry on, if we were to grant you what you're requesting, would there be more training required by the people who hold your designation today?

Ms. Angela Moore: No, there would not be. And it would be as set out in regulations, so there would be specific substances that NDs would have access to. There are things that they already are trained and educated to use.

The Chair (Mr. Shafiq Qaadri): Thanks, Mr. Balkissoon. To the PC side, Ms. Witmer.

Mrs. Elizabeth Witmer: Yes, just to continue, based on the question asked by Ms. Gélinas regarding the prescribing of drugs, you've got in here, "prescribing, dispensing, selling or compounding a drug as defined in the Drug and Pharmacies Regulation Act"?

Ms. Angela Moore: Yes, and it should also say, "as prescribed in regulation." I think that's the answer to the question you asked.

Mrs. Elizabeth Witmer: So that would be specific.

Ms. Angela Moore: Yes.

Mrs. Elizabeth Witmer: Yes, okay.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Witmer, and thanks to you, Ms. Moore and your colleague, on behalf of the Board of Directors of Drugless Therapy—Naturopathy.

ONTARIO PHYSIOTHERAPY ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter, Madame Sauvé, CEO of the Ontario Physiotherapy Association. I invite you to please come forward. If you have materials for distribution, our clerk will be happy to distribute those. Thank you. I'd invite you to please begin.

Ms. Dorianne Sauvé: My name is Dorianne Sauvé and I'm the CEO of the Ontario Physiotherapy Association. I am also a registered physiotherapist and have practised in many different settings during my career, but I've been working in policy and administration for the last several years.

The Ontario Physiotherapy Association is a voluntary professional association representing over 4,800 physiotherapists practising in Ontario today and physiotherapy students at all five university physiotherapy programs in the province. There are close to 7,000 registered physiotherapists in practice today in Ontario.

Physiotherapy is one of the few health care professions that are found in almost every sector or stream of health care delivery. You will find physiotherapists in hospitals, community health centres, in home care, in long-term care and retirement homes, in private clinics, in industry and educational institutions. Physiotherapy is funded in the publicly funded system, including CCACs, by the WSIB, in auto insurance, extended health benefit plans and private pay.

Section 22 of Bill 179 contains a number of amendments to the Physiotherapy Act to update the physiotherapy statutory scope of practice and add six additional authorities, including five new authorized acts, as recommended by the Health Professions Regulatory Advisory Council. Ontario physiotherapists very much support these amendments as positive steps forward to allowing physiotherapists to contribute up to their full competencies in an interprofessional, collaborative health system.

These amendments are a result of a long process that in many respects goes back to the original drafting of the Physiotherapy Act, 1991. We appreciate the support of Minister Caplan, his ministry and HPRAC in initiating these amendments, and we are gratified by the support that has come from other health care associations, regulatory colleges and, from the front lines, our colleagues in other health care professions.

Our written submission explains the background and rationale for the physiotherapist's access to these additional authorized acts and explains how they will be performed by those physiotherapists who are acknowledged by the College of Physiotherapists of Ontario as having the competencies necessary to perform them. I'd

be pleased to answer any questions you may have about that.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sauvé.

Ms. Dorianne Sauvé: Oh, I'm not done.

The Chair (Mr. Shafiq Qaadri): Okay.

Ms. Dorianne Sauvé: That was a pause. Sorry.

My purpose in asking to appear before the committee—this is the good part—however, is to ask for an amendment to the current draft of Bill 179. That amendment is to correct what we believe to be a drafting error, but that drafting error effectively neutralizes the amendment it's designed to achieve. I'm referring to the proposed new subsection 4(3), which refers back to the new authorized act number 7, administering a substance by inhalation.

Currently, physiotherapists are often called upon to administer oxygen during the performance of one of our existing authorized acts, namely tracheal suctioning. During the performance of tracheal suctioning, physiotherapists often have to adjust the level of oxygen being administered to maintain oxygen saturation during the procedure. Oxygen and other substances administered by inhalation, such as ventolin, are often required during physiotherapy assessment and treatment of patients with cardiorespiratory impairments where substances have already been prescribed for these clients. The act of administering them by inhalation is an entry-level competence for physiotherapists across Canada.

Despite this, under the current legislative regime, physiotherapists may perform this act by virtue of a medical directive or some other form of delegation from a physician or another authorized profession. The amendments in Bill 179 are designed to allow the physiotherapist to administer oxygen or another substance by inhalation where there is an order analogous to a prescription from a physician or another authorized profession. The problem is, under the current wording in subsection 4(3), the order applies to the member, namely the physiotherapist, and not to the procedure of administering oxygen or another substance by inhalation. This represents no change over the current status quo. This type of order is no different from a medical directive or delegation under which physiotherapists currently do this act.

The order should apply to the procedure, not to the member, and our written submission provides wording to this effect. You will find that on page 5 of our written submission, which has been distributed to you today.

It is our understanding from consultations with the ministry that our proposed wording reflects the ministry's intent. It's simple, and what appears to be a subtle change, but it's important to the profession and to effective and efficient health care delivery. As I said, the current wording represents continuation of the status quo.

Chair, this actually does conclude my prepared remarks, and I'd be happy to respond to any questions or comments.

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Sauvé. There are about 90 seconds per side, beginning with the government. Mr. Balkissoon.

Mr. Bas Balkissoon: Would you say that this one technical problem is the most important issue to your organization?

Ms. Dorianne Sauvé: In terms of the section relating to physiotherapy, absolutely.

Mr. Bas Balkissoon: Okay. Thank you very much.

The Chair (Mr. Shafiq Qaadri): From the PC side?

Mrs. Elizabeth Witmer: We're happy.

The Chair (Mr. Shafiq Qaadri): To the NDP, Madame Gélinas.

M^{me} France Gélinas: I understand the change clearly, and we'll make sure we put it forward for you.

Ms. Dorianne Sauvé: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Sauvé, for your deputation on behalf of the Ontario Physiotherapy Association.

NURSE PRACTITIONERS' ASSOCIATION OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter, on behalf of the Nurse Practitioners' Association of Ontario, Ms. Hurlock-Chorostecki, president. Welcome, and I invite you to please begin.

Ms. Tina Hurlock-Chorostecki: Good afternoon. My name is Tina Hurlock-Chorostecki, and I'm a practising adult nurse practitioner. Today I am speaking to you as the president of the Nurse Practitioners' Association of Ontario, NPAO.

On behalf of almost 1,400 nurse practitioners, we thank the committee for the opportunity to speak to the proposed Bill 179. To provide the committee with an opportunity to ask questions, I plan to share key messages only. Our detailed paper for the committee will provide more context for comments made here today.

We commend the government for the significant changes proposed in Bill 179, especially in regard to the removal of legislative barriers to NP practice.

NPAO's position on the need to expand the authority of nurse practitioners to open prescribing remains unchanged and is supported by an extensive body of literature and interjurisdictional reviews. As nurse practitioners, we practise within the context of the health care system. That system today is challenged with issues of access to care, wait-lists and an increasing burden of chronic disease, coupled with looming health human resource shortages and interprovincial labour mobility pressures.

The need to support an efficient and effective use of resources is paramount if we're to sustain our health care system. Legislative change for prescribing in the proposed Bill 179 is a step in the right direction, but is an insufficient response to the real problems for Ontarians and the health care system.

NPs are the most extensively researched health care provider role in history. This published literature of more than 1,200 papers includes numerous descriptive studies and about a dozen randomized control trials, many of

which have been conducted by Dr. Alba DiCenso of McMaster University. For most medical researchers, one randomized control trial is considered sufficiently strong evidence to change practice. For nurse practitioners, researchers have provided an overwhelming body of evidence describing safe practice in a number of clinical settings. No studies have demonstrated harm. No other single health professional group can claim such a strong body of evidence of safety and efficacy.

In most other Canadian and international jurisdictions, nurse practitioners have full authority to prescribe. In others, there are limited restrictions. In the US, 48 states have open prescribing for nurse practitioners. In the United Kingdom, general class nurses, not nurse practitioners, can take additional education and be regulated as a prescriber with access to the entire national formulary.

So why must Ontario go further? Let me give you five reasons:

- (1) To expand the authority of nurse practitioners to open prescribing is not leading-edge and does not break new ground. It's based on solid evidence, national NP standards, existing regulatory approaches and almost 30 years of Canadian experience.
- (2) Since the HPRAC review, other jurisdictions have continued to move forward with open prescribing for nurse practitioners. Nova Scotia is the seventh of 11 provinces and territories that regulate NPs to move to open prescribing.
- (3) There is one national standard of NP education and practice and one national standard of NP entry-to-practice examinations in Canada.
- (4) There's a strong rationale for a national scope of practice so the public and other providers are no longer confused about the NP role.
- (5) Finally, labour mobility requirements under the federal agreement on internal trade justify a national practice scope to support patient safety and interprofessional care.

What will opening up prescribing do? It will simply bring Ontario up to meet the bar, not set the bar, in improving access to care and reducing wait times. It will make the system more efficient and effective and will retain health human resources within Ontario. It will not harm; there's no evidence of increased risk. There is plentiful evidence of increased benefit to patients, providers and the health care system.

There are other aspects needed to bring Ontario NPs in step with other jurisdictions, and these you will be able to find in our written submission.

I'd like to leave you with a final message: no Ontarian left waiting for a national standard of care, and no Ontario NP left behind. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you very much, Ms. Hurlock-Chorostecki. I'd now invite the PC side to begin: up to 90 seconds per side.

Mrs. Elizabeth Witmer: Thank you very much for your presentation. I'd just like to ask you, how does open

prescribing impact access and wait times in Ontario's health care system?

Ms. Tina Hurlock-Chorostecki: Open prescribing for nurse practitioners will enable the right treatment for the right patient at the right time. Open prescribing for nurse practitioners in Bill 179 alone enables two thirds of Ontario NPs to impact access to care, and when coupled with a change to regulation 965 of the Public Hospitals Act, it will authorize nurse practitioners to treat hospital in-patients. Only then will all Ontarians be able to receive timely care.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Witmer. Madame Gélinas.

M^{me} France Gélinas: Right now, NPs are limited to prescribing from a list. Can you talk to us about some of the problems with the present system?

Ms. Tina Hurlock-Chorostecki: I could give you an example of a problem with the present way that we are prescribing. Because of the list approach that nurse practitioners are currently restricted to, we don't know if we're going to be able to prescribe the vaccine for the H1N1 flu. It will all depend on the name that is given to that particular vaccine. If it's called "influenza vaccine," we're able to prescribe that. If it's called something else, as simple as H1N1, it will not be on our list and we will not be able to prescribe, but nurse practitioners in other provinces will.

In addition to that, when you look at the expert panel, it would not likely get approved and placed on the list in a timely manner to actually affect what was going to be happening this fall. I suggest government might consider looking at that issue today.

It also highlights that whole importance of the regulation tying to the open prescribing in the bill that in regulation 965 we need to have all nurse practitioners prescribing the H1N1 vaccine. I myself work in a hospital and would not be able to prescribe that particular medication for my patients.

The Chair (Mr. Shafiq Qaadri): To the government side. Mr. Balkissoon.

Mr. Bas Balkissoon: Thank you very much for your presentation. In your request for open prescribing, would the nurse practitioners in Ontario require further education?

Ms. Tina Hurlock-Chorostecki: No.

Mr. Bas Balkissoon: What about insurance risk protection? Would they require additional?

Ms. Tina Hurlock-Chorostecki: We have appropriate insurance currently.

Mr. Bas Balkissoon: And it will cover this extended scope of practice?

Ms. Tina Hurlock-Chorostecki: It will. There have been with the Canadian Nurses Protective Society, which is the organization that has the liability insurance for nurse practitioners, no claims to date against nurse practitioners, and they say that we are covered with an appropriate amount of liability insurance currently.

Mr. Bas Balkissoon: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Hurlock-Chorostecki, for your deputation on behalf of the Nurse Practitioners' Association of Ontario.

COLLEGE OF DENTAL HYGIENISTS OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I'd now invite Ms. Richardson, registrar of the College of Dental Hygienists of Ontario. Welcome, and we'll distribute that for you. I'd like to you to, please, officially begin now.

Ms. Fran Richardson: Thank you, Mr. Chair. My name is Fran Richardson, and I'm the registrar/CAO of the College of Dental Hygienists of Ontario, which is the statutory regulatory body for the over 10,000 dental hygienists who practise today in this province.

"Pain" is an ugly word, and so is "disease." The most common disease in the world occurs in the mouth. Nearly everyone has some form of periodontal or gum disease. The good news is that both gum disease and tooth decay are preventable.

The college that I represent regulates those members of the health care family who are dedicated to the prevention of oral disease. However, if gum disease has been allowed to progress, then treating that condition may be painful. In today's world, with modern health care and modern drugs, there is no reason why anyone should have to suffer pain when they get their teeth cleaned.

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Pain management and pain control are important components of health care. Dental hygienists are integral members of the health care team, and the patients/clients we serve deserve to have access to modern methods of pain control.

Local anaesthesia—or freezing, as most people will call it—is safely administered daily by thousands of dental hygienists in western Canada, but not in Ontario; by tens of thousands of dental hygienists in the United States, but not in Ontario; by thousands of dental hygienists in Europe and in other parts of the world, but not in Ontario. For some unexplained reason, the public of Ontario has been denied modern pain management when receiving periodontal therapy or teeth cleaning. Dental hygienists educated in Ontario move west, successfully complete a local anaesthesia course, practise out west, return to Ontario and then are told, "No, not in this province." There is no logic to this situation.

Two years ago, the then Minister of Health and Long-Term Care, George Smitherman, had the foresight to propose amendments to the Dental Hygiene Act so that the public could have direct access to preventive oral health care. Those amendments were approved by the Legislature, and the accompanying regulations were put in place by cabinet in September 2007. There are now many, many Ontarians who have the dental hygienist come to them in their homes, in their residences or in their long-term-care facilities. More people than ever have an increased quality of life because their mouth is

clean, thereby enabling them to eat, to smile and to laugh. These people deserve to have a pain-free experience.

So what is our request? Our request is that, through Bill 179, the Dental Hygiene Act be amended to grant dental hygienists access to the controlled act of administering a substance by injection, supported by a CDHO-specific standard of practice relating to the administration of local anaesthesia that would come into force when the regulations are approved. We have that standard already drafted in the written submission to you.

What will the college do if you grant this to us? Well. we will ensure that we will enact a professional misconduct regulation prohibiting a CDHO registrant from administering local anaesthetics without certification form the college, and that is already drafted as well. We will provide certificates of authorization to those so certified and require that that certificate be displayed in the registrant's place of practice. We will also initiate a pilot project with selected accredited dental hygiene programs in Ontario, in which the administration of local anaesthesia would be included in their curricula with defined outcomes. We will collaborate on that aforementioned project with two faculties of dentistry, the one at the University of Toronto and the University of Western Ontario's Schulich School of Medicine and Dentistry and/or the University of Manitoba's School of Dental Hygiene, to develop that Ontario curriculum. We will include contraindications to the use of local anaesthesia and the product monographs on the CDHO website, and we will provide information on our Knowledge Network on the CDHO website. Lastly, we will initiate, in conjunction with the Ministry of Health and Long-Term Care and the Ministry of Training, Colleges and Universities, a research project which includes dental hygienists and members of the public in the use and acceptance of the administration of local anaesthesia by dental hygienists in Ontario.

The CDHO has provided you with a detailed written submission that includes back-up material, including statistics indicating the safety of the administration of local anaesthesia by dental hygienists. Of those dental hygienists in other jurisdictions, there have not been any discipline cases in any of the other jurisdictions related to local anaesthesia. This college currently has 300 dental hygienists on a roster who have already received the appropriate education; many were practising local anaesthesia for years before they moved here.

I assure you, members of the committee and the people of Ontario, that the College of Dental Hygienists of Ontario is making this request for the comfort of the people our registrants serve.

Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Richardson. About a minute or so per side, beginning with Madame Gélinas of the NDP.

M^{me} France Gélinas: I think you made your point very clearly: well documented, well presented, well understood. We'll put them forward. Thank you.

The Chair (Mr. Shafiq Qaadri): To the government side, Ms. Mitchell.

Mrs. Carol Mitchell: I just have a couple of quick questions. Since the legislation was passed with regard to dental hygienists, how many are acting independently, and in what settings are they acting independently today?

Ms. Fran Richardson: Currently, my understanding is that we have listed on our website over 110 independent practices. Well over half of those have mobile practices that go into residences and different people's homes.

They are all over the province. It seems that most of the mobile ones are in rural areas, areas where there have been some access problems to oral health care. But there are more and more opening up all the time.

As I say, though, the majority are working towards having some mobile aspect, which is of course what we had asked for the legislation change for.

The Chair (Mr. Shafiq Qaadri): To the PC side.

Mrs. Christine Elliott: I'd just like to thank you very much, Ms. Richardson, for your presentation: very clear, concise and entirely supportable.

Ms. Fran Richardson: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Elliott, and thanks to you, Ms. Richardson, for your deputation on behalf of the College of Dental Hygienists of Ontario.

ONTARIO ASSOCIATION OF MEDICAL RADIATION TECHNOLOGISTS

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter, Mr. Hesler, CEO of the Ontario Association of Medical Radiation Technologists, and colleague. I just want you to introduce yourselves as you speak, for Hansard. I would invite you to please begin.

Dr. Robin Hesler: I'm Dr. Robin Hesler, CEO of the Ontario Association of Medical Radiation Technologists. With me today is the deputy CEO and manager of professional services, who looks after all the education and practice areas of the Ontario Association of Medical Radiation Technologists.

Mr. Chair and committee members, I'd like to thank you very much for allowing us to appear today and give a presentation. I will be talking briefly on it, as I know you have this submission, and I'll be hitting on the highlights.

This is an exciting time for medical radiation technology in terms of what is happening out there in regard to technology and changes in practice, which are rapidly evolving. It's an exciting time because the Regulated Health Professions Act is being updated. I commend the government for taking this step to update the Regulated Health Professions Act.

As part of our experience in Regulated Health Professions Act updating, it was a real collaborative effort, and I would like to praise several areas of the government, external and internal.

First is HPRAC, who did a lot of work and, particularly in regard to our profession, presented some very, very good information and arguments. During that process, thanks to the HPRAC chair, we learned a great deal

about other professions that we were involved in. That's part of this whole interprofessional collaboration experience.

I'd also like to commend Shabnum Durrani, the political person in the minister's office whom we worked with, for educating us, and also Marilyn Wang and her crew for the work they did in helping us and keeping us on the path as to where we should be going or thinking of in regard to our profession.

As part of this collaborative effort, we worked with the Ontario Association of Radiologists, the Ontario Physiotherapy Association, the Ontario Hospital Association and quite a few others in regard to where we've come to related to our scope of practice issues and some of the other matters related to Bill 179.

Our three main areas—really, the key areas that we're concerned about, as were stated in the submission: One is our scope of practice statement; we feel a piece is missing in that scope of practice statement.

The second is related to professional liability insurance in regard to clarifying what professional liability insurance actually really means. It isn't clear to us in the proposed bill.

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The third item relates to the Healing Arts Radiation Protection Act. Although we have no issue in terms of nurse practitioners and physiotherapists being able to order diagnostic imaging tests, we think it's a bit premature at this time, given the condition of the Healing Arts Radiation Protection Act and the education and training of nurse practitioners and physiotherapists related to diagnostic imaging exams, in terms of utilization and the radiation protection aspects.

We're concerned about those three particular key things because of the impact that they have on the ultimate patient care in the province of Ontario. We feel that diagnostic imaging is a very key component—in fact, it's a very expensive component for the government—and therefore care must be taken in regard to the practice of the profession and those individuals impacting on the practice of the profession.

That's my opening statement. As I noted, the three key areas: One is the scope of practice statement, where we believe that the condition-of-the-patient issue is an extremely important one for us. If it's not clear and transparent to others that the MRT can do this, then it causes barriers. These are barriers to interprofessional collaboration, which is what we're trying to achieve, I believe. The second is the PLI clarification issue and the third is the Healing Arts Radiation Protection Act, where we believe that needs to be updated first, the checks and balances put in place and then other health care professionals would be in a better position to order diagnostic imaging tests.

The Chair (Mr. Shafiq Qaadri): Thanks very much, Dr. Hesler. We've got about 90 seconds per side, beginning with the government. Mr. Balkissoon.

Mr. Bas Balkissoon: Your first issue: I'm not quite clear what it is. Could you expand on that so there's some clarity in laymen's terms?

Dr. Robin Hesler: We believe that there's a component missing where the medical radiation technologist is allowed to assess the condition of the patient. That's missing in the scope of practice statement. We had asked for that originally. We had asked, in fact, that the statement would read that we would assess the patient's condition before, during and after a procedure because we were getting resistance from other sectors of the health care profession that, our scope of practice statement, even though it is supposed to be a generalized statement and an overview of what the profession does—they were taking the statement literally. We were running into resistance as to what technologists could do or not do, and that was causing a lot of inefficiencies in those particular areas where that was happening. So we believe and I believe you'll be hearing from the College of Medical Radiation Technologists of Ontario later about the same issue—that it would be clearer and more transparent to the public that they understand that an MRT does-

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Balkissoon. To the PC side, Ms. Elliott.

Mrs. Christine Elliott: Thank you very much for your presentation. I was wondering if you could expand just a little bit about the concern that you have about the extended diagnostic imaging practice for nurse practitioners and for physiotherapists, specifically what your concern is.

Dr. Robin Hesler: The issue is really about patient quality and patient care in terms of radiation protection and also the challenges to the health care system. The more individuals who are allowed to order diagnostic tests, the more of a burden it becomes on hospitals and independent health facilities to try and get those patients through, meet wait times, and also the amount of radiation that patients will get.

What we would like to see here is that the proper education and training is in place first so that those individuals understand that when they're ordering a test, this is the most appropriate test that they're ordering. "Should I in fact be ordering an ultrasound versus a CT?", as an example. Or, "Should I be ordering general X-rays versus a CT?" We're very concerned that right now what is happening out there is that we're going to see increased pressure on the MRTs, who are already stressed out in their workplaces as it is with the number of tests coming. So we just want to see the education and training in place first, the checks and balances put back into the HARP Act, which is outdated and needs updating, and—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Elliott. To you, Madame Gélinas.

M^{me} France Gélinas: So are you under the impression that if physios and NPs can order radiation therapy diagnostics, that will lead to an increased demand?

Dr. Robin Hesler: I believe that if the proper education and training is not there, yes, that will happen.

M^{me} France Gélinas: Okay. So you don't agree with their arguments that right now, what they do is they just

ask the family physicians to require the test. Do you think this is not a valid argument?

Dr. Robin Hesler: I'm not sure what you're asking me. Can you ask me that question again? Sorry.

M^{me} France Gélinas: Sure. Physios and NPs say that what happens now is that if they need this to continue their treatment, they will simply refer them back to their family physicians, who will order the diagnostic test.

Dr. Robin Hesler: That probably will happen, yes.

M^{me} France Gélinas: Okay.

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Gélinas, and thanks to you, Dr. Hesler, for your deputation, and to your colleague, on behalf of the Ontario Association of Medical Radiation Technologists.

Just before I call our next presenters, on behalf of the committee and, by extension, on behalf of the people of Ontario, I'd like to welcome Mr. Richard Patten, MPP in former Parliaments here, and of course one of our colleagues from Ottawa.

ONTARIO COLLEGE OF PHARMACISTS

The Chair (Mr. Shafiq Qaadri): I now invite Mr. Clement and Ms. Williams on behalf of the Ontario College of Pharmacists. Welcome. Please be seated. You've seen the protocol. I invite you to begin now.

Mr. Stephen Clement: Thank you. Mr. Chair and members of the standing committee on Bill 179, good afternoon. My name is Stephen Clement and I am the president of the Ontario College of Pharmacists and a practising pharmacist from Callander, Ontario. With me today is our registrar, Deanna Williams.

The Ontario College of Pharmacists appreciates the opportunity to attend before you today to share our comments respecting Bill 179. I am pleased to express the college's strong support for Bill 179. In particular, the Ontario College of Pharmacists is delighted with the proposals that will give effect to an enhanced scope of practice for pharmacists. The expanded scope of practice will optimize the role of Ontario pharmacists so that the public may fully benefit from the pharmacists' unique expertise in medication therapy management. It also brings pharmacy practice in Ontario into line with that of other jurisdictions across Canada and around the globe.

It is the college's view that all pharmacists currently licensed in Ontario possess the knowledge, skills, ability and judgment to safely and effectively perform the four new authorized acts proposed for pharmacy. The college is committed to working with government, educators and other professions so that these new authorized acts are done in accordance with appropriate terms and conditions to ensure public safety and protection.

To meet the needs of Ontario patients, pharmacists will, as part of the health care team, adapt, modify and extend existing prescriptions to best monitor and manage their patients' drug therapy. Permitting pharmacists to order and interpret lab tests for the purposes of medication therapy management, to administer substances by injection or inhalation for the purpose of demonstration

and educating patients, and to prick the skin for purposes of blood glucose monitoring will contribute to patient care by improving access and increasing the efficiency of the interprofessional health care team. The ability of pharmacists to administer a drug by injection will also enable those pharmacists who have been trained to do so to provide vaccinations in the event of a pandemic.

The Ontario College of Pharmacists has serious concerns, however, respecting the proposed provision that would give the minister the power, in the absence of any articulated or defined criteria, to appoint a college supervisor to assume control of a health regulatory college in Ontario. It is extremely difficult to support this proposed provision without any understanding as to why such measures are deemed necessary or what circumstances or situations would give rise to such measures.

The Ontario College of Pharmacists takes very seriously its legislative and regulatory mandate and holds itself to a high level of accountability in protecting the public. All Ontarians should be proud of the self-regulatory model for professional regulation that we have in Ontario. It is one that is both admired and aspired to around the world and is held up as a model for self-regulation.

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While this college strongly supports the principle of accountability and transparency, we also support the principle of fairness. If this provision goes forward, it must only do so where the criteria for appointment of a college supervisor are clearly articulated; where parameters as to the role and responsibilities of such a supervisor, once appointed, are defined; and where due processes are in place and followed to ensure that such measures are only taken in the interest of public protection.

The Ontario College of Pharmacists recognizes and supports interprofessional care and collaboration as a way of providing more efficient and effective health services to the public of Ontario. We look forward to collaborating with our colleagues to ensure that all of us who are prescribing, dispensing, compounding, selling and administering drugs do so to a common standard of high-quality care for Ontario patients.

The Ontario College of Pharmacists has considerable experience and expertise with respect to dispensing. As such, we hope to provide leadership in working with other colleagues to develop standards that will maintain Ontario's safe and effective drug distribution system.

Although not currently contemplated, the council of the Ontario College of Pharmacists would support discussions with government respecting the future implementation of a minor ailments program, such as that which exists in Great Britain. Making the pharmacist the primary care practitioner for some 30 minor ailments—for example, diaper rash, pink eye, cough and cold, athlete's foot—has shown to have improved access to family physicians for those patients with more serious ailments, while optimizing the role of the pharmacist.

On a personal note, as a pharmacist from a small town in northern Ontario, I can say that this legislation will enable pharmacists such as myself to work together and collaboratively with physicians, nurse practitioners and other health care professionals in small communities across the province to optimize health care access and provide continuity of care to our patients.

Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thanks, Mr. Clement. We have about 90 seconds per side, beginning with the PC caucus. Ms. Elliott?

Mrs. Christine Elliott: I just have one question. Thank you very much, Mr. Clement. I take it you agree with everything except perhaps the proposed provisions that would give the minister the power to appoint the college supervisor and you'd like to see that section deleted; is that fair to say?

Ms. Deanna Williams: We're not suggesting—either it should be deleted so that more consultation could happen, but in the event that it does go forward, it needs to go forward with clearly articulated parameters and criteria under which a supervisor might end up being propelled into a self-regulatory college and what they would do once they're in there.

Mrs. Christine Elliott: Thanks.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas.

M^{me} France Gélinas: My question is along the same line with the part of the bill that talks about the appointment of a supervisor. You were a signatory to a document that was shared by a number of colleges, and basically—I'm not sure I understand. I thought I understood what you had in writing clearly, which doesn't seem to be in line with what you just said. Did you want it to remain or did you want subsection 5(1) of the college to be expanded so that if there is conflict there, it could be resolved at that level?

Ms. Deanna Williams: We were unclear as to why the existing powers that are there in section 5 wouldn't be first maximized before something else went to another step, and that isn't there. So certainly that would be a preference, a demonstration that section 5 were used to its maximum, and if that wasn't appropriate or the public safety concern was still in place, then we should go to another provision.

M^{me} France Gélinas: Any idea why that was put in?

Ms. Deanna Williams: No, and I think this is part of the problem. We don't know why this was put in. There was no explanation as to why this was put in.

M^{me} France Gélinas: And do you know where it comes from?

Ms. Deanna Williams: No.

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Gélinas. To the government side, Ms. Mitchell.

Mrs. Carol Mitchell: Thank you very much for your presentation. A previous presenter brought up some concerns with regard to remote dispensing, but I can see by your presentation you support remote dispensing. The concerns that were raised were specifically not being able to address the health and safety of Ontarians in remote or rural areas. I wanted to give you the opportunity to speak

specifically to that as you were from a northern area previously.

Mr. Stephen Clement: In a sense, for the last 35 years I've dispensed in a remote location, and the definition of "remote" is many-pronged. The Ontario College of Pharmacists has recently defined what it feels remote dispensing should and would look like. It's currently being spoken about at district meetings that we're holding across the province, and I think if the previous submitter was to attend one of those meetings, they would be very happy with what we're going forward with as far as remote dispensing goes.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Mitchell, and thanks to you, Mr. Clement and Ms. Williams, on behalf of the Ontario College of Pharmacists.

ONTARIO ASSOCIATION OF OPTOMETRISTS

The Chair (Mr. Shafiq Qaadri): I invite now our next presenter, Dr. Nicol, on behalf of the Ontario Association of Optometrists. Welcome to you and your colleagues. I'd just invite you to introduce yourselves as you speak individually, and I'd invite you to please begin officially now.

Dr. Christopher Nicol: Thank you, Chair Qaadri and members of the committee, for this opportunity to present before the standing committee today. My name is Dr. Christopher Nicol. I'm an optometrist and policy consultant at the Ontario Association of Optometrists. With me are the past president Dr. Derek MacDonald and also policy consultant; Melissa Secord, assistant executive director; and Christine Morrison, OAO's government relations manager. We welcome this opportunity to provide the members of the committee with our opinions on Bill 179.

Founded in 1909, the OAO is a voluntary professional organization that represents more than 1,300 optometrists in Ontario. We're celebrating our 100th anniversary this year. The association proudly serves the profession by undertaking government advocacy, membership education and public awareness initiatives. Optometrists play a vital role in the assessment, diagnosis, treatment and continuing management of eye conditions for three million residents of Ontario every year.

While Bill 179 will expand the scope of practice for a variety of regulated health professions, we are pleased to acknowledge that the Health System Improvements Act, 2007, authorized optometrists to perform the controlled act of prescribing drugs. OAO is pleased that Minister Caplan has accepted the recommendation from the January 2009 HPRAC report, Critical Links: Transforming and Supporting Patient Care, to expand the medications optometrists are authorized to prescribe to include drugs used in the treatment and management of glaucoma. This expansion will improve access to care for many patients with glaucoma, particularly for those in rural areas.

I'm going to talk about four sections of the bill: Optometry Act, the expert committees and college supervisor.

Section 20, Optometry Act:

OAO strongly supports the proposed amendments to Section 20, but wishes to again stress the increased benefits to Ontarians should authorized drugs be identified by category and not as part of a list.

Current Ontario legislation governing non-physician prescribers is outdated and relies on lists of authorized drugs set in regulations. In contrast, in other Canadian jurisdictions where optometrists have been granted the controlled act of prescribing, drugs are commonly identified by category. Delays caused by the necessity of a regulation change for the introduction of a new drug will prevent non-physician prescribers from accessing the most up-to-date drug therapies and therefore prevent patients from receiving the care that they deserve.

For example, two new steroid-class medications for the treatment of ocular inflammation, Alrex and Lotemax, have a superior safety profile, improved efficacy and minimal adverse effects. If these medications were not part of an approved list, patients would be denied better and safer care.

Notwithstanding that either individual drugs or categories of drugs are referenced in the bill, identifying drugs by category would virtually eliminate unnecessary delays in accessing the most appropriate drug therapies and allow for the timely integration of evidence-based best practice.

Accordingly, OAO strongly supports the amendments to the Optometry Act through Bill 179 to permit the College of Optometrists to designate the drugs that optometrists can prescribe. The introduction of "rolling incorporation" as a regulatory mechanism permits a more reasonable way to authorize drug use among non-physician prescribers. These proposed changes create a more streamlined and efficient method of drug regulation, resulting in a timelier introduction of new drugs.

Section 24, expert committees: The RHPA is also being amended to permit the establishment of one or more expert committees to oversee rolling incorporation as a regulatory mechanism to authorize drug use among non-physician prescribers. While OAO supports the establishment of such committees as a means to expedite approval of new drugs for use among non-physician prescribers, it is critical to have optometric representation as part of the expert committee when considering approval of drugs for optometric use. Excluding optometric representation when reviewing optometric drugs would confuse the process and propagate an over-dependence on medical directives in regulating other health care professions.

Additionally, it is important to provide regulated health professions with a clear overview of the duties and powers conferred upon the expert committee by the Lieutenant Governor.

OAO would like to seek reassurance that reviews by the expert committee would be conducted in a timely fashion with an aim to complete reviews within a reasonable time frame. Further, there should remain a commitment to review drugs for optometric use on an annual basis, at a minimum.

College supervisor: OAO appreciates that self-regulation is a privilege granted to health professions under the RHPA. Consequently, regulatory colleges are afforded the freedom to establish regulations, standards and guidelines for the profession they govern. However, the RHPA also requires that colleges function within a framework consistent with the objectives stated in the Health Professions Procedural Code. The overriding principles of the code require that a college protect the public interest and govern the profession in accordance with the RHPA.

Currently, under the RHPA, the minister has broad powers to oblige a college council to comply with the intent of the RHPA, including the authority to make, amend or revoke a regulation. Notwithstanding these broad powers, this bill would further increase the minister's powers. The appointment of a college supervisor will further assist the minister in ensuring that the administration of a college is consistent with the expectations of the RHPA and associated legislation.

I would now respectfully ask that you consider the recent actions of the College of Opticians of Ontario. Opticians are health professionals regulated under the RHPA, authorized to dispense eyewear only upon a prescription from an optometrist or a physician. Opticians have sought to expand their scope of practice to perform only one aspect of a comprehensive eye examination, a test of the focusing of the eye, and to use this test in isolation to dispense eyewear, thus bypassing the legislative requirements for a prescription.

To this end, the College of Opticians unilaterally and independently published standards of practice in the fall of 2007 that authorized certified opticians to perform eye tests and prescribe and dispense eyewear without a prescription. The published standards of practice were not only a contravention of the Opticianry Act, but also disregarded recommendations in the April 2006 New Directions report from HPRAC, which had been asked to review this matter.

In 2001, then Minister of Health Elizabeth Witmer directed the College of Opticians to advise their members that they should not perform tests to measure the focusing of the eye. Notwithstanding this explicit directive from the Ministry of Health, the college continued to allow opticians to perform refractions, including rejecting a recent letter from the assistant deputy minister Dr. Joshua Tepper reminding the college of the direction.

This provides a clear and timely example of a college refusing to comply with a direction from the minister and attempting to expand the legislated scope of practice for the profession without either due process or legal authority. With the amendments proposed in section 24, the minister will have a more direct mechanism to require the College of Opticians and any other college under the same circumstances to immediately comply with the act.

OAO would, however, stress that any increase in power must be carefully considered and scrutinized. OAO requests clarification on what actions would trigger the appointment of a college supervisor. Further explanation is also required regarding who bears the cost and what happens with complaints and disciplinary actions that are in process at the time of the intervention by the college supervisor.

Generally, OAO is pleased with the legislation, and we anticipate that the committee will approve Bill 179, as tabled, with our concerns addressed.

Thank you for your time today and the opportunity to present our views on the bill. If you have any questions, I'll be pleased to answer them.

The Chair (Mr. Shafiq Qaadri): Thank you, Dr. Nicol. About a minute or so per side, beginning with the NDP. Madame Gélinas.

M^{me} France Gélinas: Thank you for coming here. I just wanted to clarify something. I was under the impression that the list of medications that an optometrist could prescribe had not been finalized. Am I wrong?

Dr. Christopher Nicol: No, you're correct; that's right. However, it will be a list, and we would rather see drugs regulated by category as opposed to a list.

M^{me} France Gélinas: Okay. So the first list that was promised way back has never actually appeared?

Dr. Christopher Nicol: No. It's been revised based on the recommendations of HPRAC that glaucoma medications be included. So the list was revised. However, the question is, should it be a list or categories? We believe it should be categories.

M^{me} France Gélinas: Okay. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Gélinas. To the government side, Mr. Balkissoon.

Mr. Bas Balkissoon: Just for clarification on the supervisor: If the legislation is clarified that existing procedures would be exhausted before a supervisor is sent in by the minister, would that make your association happy?

Dr. Christopher Nicol: Well, I think the problem may be that the minister in the past has been loath to exercise the authority that he has under the act. Perhaps if an alternative method to do that is available, he would choose that method rather than delay action.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Balkissoon. To the PC side, Ms. Elliott.

Mrs. Christine Elliott: I just have one quick question, and that's with respect to the composition of the expert committees and whether you're looking for any kind of statutory change, or if this is just something that you want to have ironed out, I guess, in the normal course of things once the committees are established.

Dr. Christopher Nicol: If we could have assurance that we would have optometric representation on that committee, whether statutorily or with guidelines, that would be acceptable. But the most important part is having an optometrist on that committee.

Mrs. Christine Elliott: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Elliott, and thanks to you, Dr. Nicol, and your colleagues on behalf of the Ontario Association of Optometrists.

ASSOCIATION OF ONTARIO MIDWIVES

The Chair (Mr. Shafiq Qaadri): I invite now our next presenter, Ms. Kilroy, president of the Association of Ontario Midwives, and colleagues. I invite you to please be seated. I invite you to begin now, please.

Ms. Kelly Stadelbauer: Good afternoon. Thank you for inviting the Association of Ontario Midwives to present on Bill 179. My name is Kelly Stadelbauer, actually, and I'm here presenting on behalf of Katrina Kilroy, the AOM president, who is a practising midwife and who could not be here today because she has been called away to attend a birth. Such is the life of a practising midwife. I'm also here with my colleague Alisa Simon, who is part of our policy department at the AOM. I am the executive director at the Association of Ontario Midwives, the professional body representing midwives and the practice of midwifery in Ontario.

I'd like to thank the Minister of Health and Long-Term Care for tabling this important bill, and I'd like to thank all three political parties for their support of midwifery over the years. Midwives are excited about the potential of Bill 179. This bill represents a real opportunity to positively affect the care of mothers and newborns in Ontario.

The association has prepared a written submission to the committee, so I won't review the entire content of that today, as we have limited time, and I know the committee will have an opportunity to consider our submission in its entirety.

Before I delve in to Bill 179, however, I wanted to give a quick summary of the kind of care that midwives provide. Midwives are primary health care providers on call for their clients 24/7. Midwives are experts in low-risk pregnancy and birth. They provide primary care to women during pregnancy, labour, birth and six weeks postpartum, and they're also primary care providers to newborns until six weeks of age. The Ministry of Health has evaluated and recognized midwives as primary care providers with excellent clinical outcomes, safe practice and exceptionally high rates of client satisfaction.

I have just noticed that Ms. Kilroy, our president, has arrived. Do you want to continue?

Ms. Katrina Kilroy: Sure. Thank you so much. The nature of the job: I've come directly from Mount Sinai Hospital, where I was at a labour.

Mr. Vic Dhillon: Boy or girl?

Ms. Katrina Kilroy: It's not out yet. I'm going to go back when I'm done.

Mr. Vic Dhillon: A work in progress.

Ms. Katrina Kilroy: We'll send you an e-mail.

The Chair (Mr. Shafiq Qaadri): We want pictures—

Ms. Katrina Kilroy: Well, I can do that with my BlackBerry now, you know.

Anyway, it's a real pleasure to be speaking to you today, and thank you for your patience with our little dosi-do here.

Really, the essence of what we want to say to you today is that the Association of Ontario Midwives wholeheartedly supports all of the changes related to midwifery that are addressed in Bill 179. These changes, like enabling midwives to communicate a diagnosis and administer suppository drugs, are long overdue. They're things that are just naturally a part of the work that we do every day in caring for pregnant women and their newborns, and the intent is, really, that midwives are able to provide that care that is necessary for a normal, healthy delivery. So these things really will help us to do that. 1550

The other part of it is that they allow us to function more fully in an interprofessional setting and to fully maximize our skill and expertise. If we're going to work interprofessionally with other people trained in maternity care, it is important that we have these things within our scope of practice. This will strengthen the maternal-newborn care system in Ontario.

They are important steps that ensure that the legislative framework that regulates midwifery keeps pace with the changing health care environment so that we can care for low-risk women and newborns in the most safe and effective manner. It doesn't make sense for a midwife to be referring someone to a physician for something that's a normal part of pregnancy and birth. I think the legislation, as it was originally drafted, recognized that, so we're doing some catch-up here.

The changes that are outlined in Bill 179 will help to reduce the duplication of care and unnecessary consultations and transfers of care to physicians. As I said, this is very critical to creating a foundation for a collaborative environment that might help us contribute to interprofessional care models.

Although we're quite pleased with the changes that have been proposed, further changes are also needed to enable midwives to optimally contribute in that collaborative and interprofessional setting and to provide basic care to normal healthy women and newborns.

Today what I want to do is really focus on one vital change that's needed, and that is to improve and streamline the drug approvals process. Since 1994, midwives have had the authority to prescribe and administer particular drugs for low-risk clients. The original list that was drafted was intended to ensure that midwives could engage in that routine prenatal, intrapartum and post-partum care.

Midwives have demonstrated competency and have quite an exemplary safety record. However, the past 15 years have revealed a number of shortcomings in the drug-approval process. In particular, the process to add new drugs to the midwifery pharmacopeia is unduly lengthy and restrictive and, ultimately, it compromises patient safety. We can't get new medications added in a timely enough way to provide the safe and comprehensive care to women and newborns that we want to provide, that we're trained to provide.

An example of this which you may have already heard tell of somewhere in your deliberations is that at the time the midwifery legislation came into being, routine antibiotics for group B strep prophylaxis were not part of routine intrapartum care. Since the time when that was drafted in the early 1990s, that has changed, and it is a routine part of care for about 25% of women who test positive for group B strep in their pregnancies. The standard of care is to provide prophylaxis to these women in labour.

We've been trying to get that added to our pharmacopeia for a long time. The college of midwives requested that antibiotics be added in 2004. We still have not achieved that, nor have we been able to get antibiotics in our scope for treating straightforward mastitis. The process has really dragged on, and five years later we're still consulting in order to get a simple prescription for something that is routine.

I can tell you, because I've just come from a Health-ForceOntario project going into a number of communities around the province, that this is a great irritant in relationships between midwives and physicians, that midwives need to wake up a physician at 3 o'clock in the morning to get a prescription for something that is a routine part of prenatal care. I can't tell you how many times doctors have said to me, "Why can't you guys do that? I don't understand why you guys can't do that. You guys really need to be able to do that." That's in my downtown hospital where the doctors are on the floor all the time, so I can only imagine what the midwives in those more outlying communities who are having to call somebody in from half an hour away to do that consultation go through. We really did hear around the province that this is putting a strain on relationships and people want a solution to this.

Our first request for improving Bill 179 is to ask for the addition of antibiotics to the drugs that midwives can prescribe. This is critical. I recognize this would be a bold step, but I'm really asking the committee to take this step. It's long overdue. It's the right thing to do. It's the one thing—when midwives were looking forward to these reviews, it was like, "Thank God, we might finally fix that problem with drugs in general and with group B strep in particular." I can tell you, for midwives in the field—and their clients, and of course, the physicians they consult with—they're really hoping for some change here.

In trying to improve the current drug approvals process, Bill 179 specifies that regulations governing midwives' ability to prescribe may designate either a drug list or drug categories. However, we contend that the bill should specify that midwives be regulated by categories alone. This would allow the College of Midwives to determine, within a category of drugs, which drugs specifically midwives would be able to prescribe. One example of why this is important: Ergonovine maleate is one of the two medicines that midwives were regulated to use for postpartum hemorrhage—

The Chair (Mr. Shafiq Qaadri): You have about a minute left, Ms. Kilroy.

Ms. Katrina Kilroy: How much?

The Chair (Mr. Shafiq Qaadri): One minute.

Ms. Katrina Kilroy: When that drug became unavailable—so this was an urgent situation—it took one year to get special permission for midwives to get access to a different drug of the same type to use at home births and in other emergency situations. This is critical. The rest of our input you will read in our submission.

I really just want to say that I became a midwife because I wanted to provide high-quality care, excellent care to women at a very pivotal time of their life. I'm asking you to be bold and ensure that Bill 179 will allow me and my colleagues to continue to provide midwifery care in a way that fully utilizes our expertise and in a way that moves Ontario to fostering a positive interprofessional environment for pregnant women.

Thank you for your time.

The Chair (Mr. Shafiq Qaadri): Thank you to you, Ms. Kilroy, and to your colleagues—and to the unborn child—on behalf of the Association of Ontario Midwives.

JOYCE ROWLANDS

The Chair (Mr. Shafiq Qaadri): I'd now like to invite our next presenters to please come forward, Ms. Rowlands of the Transitional Council of the College of Psychotherapists and Registered Mental Health Therapists of Ontario, if present. Ms. Rowlands, welcome.

Ms. Joyce Rowlands: Thank you.

The Chair (Mr. Shafiq Qaadri): We'd invite you and your colleagues to—we'll distribute that on your behalf. I'd like to invite you to please begin now.

Ms. Joyce Rowlands: Yes. Good afternoon, members of the standing committee. Thank you for the opportunity to appear here today to comment on Bill 179. My name is Joyce Rowlands. I'm the registrar with the Transitional Council of the College of Psychotherapists and Registered Mental Health Therapists of Ontario. With me today is Krystina Walko, our policy and communications analyst.

Members should have a copy of my remarks as well as a submission. If you're following along, you'll probably want to use the remarks.

Before I address a couple of issues raised by Bill 179, I should give you some background about the new college.

Though the Psychotherapy Act received royal assent in 2007, only parts of the act—those allowing for the appointment of the transitional council of the college and the registrar—have been proclaimed. I was appointed in January of this year, and members of the transitional council are expected to be announced shortly. The college is in the very earliest stages of becoming a fully functioning regulatory body. That process is expected to take about three years.

I bring this to the committee's attention because it's important for you to understand that I do not speak on behalf of the transitional council of the college. The views expressed here are my own, informed by discus-

sions with stakeholders, ministry officials and legal counsel. For these reasons, I will not be addressing any of the broader issues raised by Bill 179. I will be confining my remarks to proposed amendments to the Psychotherapy Act and to changes I wish to propose to the wording of the "holding out" clause in our act.

Specifically, there are two issues I would like to comment on. The first is the amendment included in Bill 179 to change one of the restricted titles in the Psychotherapy Act from "psychotherapist" to "registered psychotherapist."

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As registrar, I wish to express my strong support for this amendment. This change will strengthen regulation by making it clear that practitioners using the title "registered psychotherapist" are regulated professionals, and it will help clients identify practitioners who are qualified and accountable. Unfortunately, there is a potential downside to the proposed title change. Fortunately, there's also a remedy, one I urge the committee to consider.

Here's the downside: If Bill 179 passes as it is, we will have inadvertently, I believe, created a situation where use of the title "psychotherapist" by itself is unprotected, where anyone can use the title with or without qualifications. This is exactly the situation the Psychotherapy Act was intended to remedy.

Currently, and until the act is fully implemented, anyone, with or without qualifications, can hang up a shingle and call himself or herself a psychotherapist. Re-creating this situation, I believe, would seriously undermine public protection and be confusing to the public.

Some may argue that the prohibition against using abbreviations and variations of protected titles in the Psychotherapy Act, along with the "holding out" clause, will suffice to prevent unqualified practitioners from using the title "psychotherapist" by itself. However, legal counsel has expressed concerns that these arguments may not sway the courts. The concern is that a court will take the view that the intent of the Psychotherapy Act is to leave the title "psychotherapist" in the public domain. As a result, the door may once again be open for unqualified people to use the title "psychotherapist," an unintended consequence with the potential to seriously undermine the intent of the act and to hinder effective regulation.

Fortunately, there is a remedy. It is to include the title "psychotherapist" as a restricted title in the Psychotherapy Act, 2007. This would be consistent with protection of the title "nurse," along with "registered nurse," "nurse practitioner" and "registered practical nurse" in the Nursing Act, for instance.

By including the title "psychotherapist" as a restricted title, along with "registered psychotherapist" and "registered mental health therapist," there can be no doubt that only regulated professionals are permitted to use the title "psychotherapist" in any form.

The second issue I wish to address is the representation of qualifications provision in the Psychotherapy Act, commonly known as the "holding out" clause. The

wording of the clause as proposed by Bill 179 reads as follows: "No person other than a member shall hold himself or herself out as a person who is qualified to practise in Ontario as a registered psychotherapist or a registered mental health therapist."

I respectfully suggest that the word "psychotherapist" be added to this clause to make it clear that non-members of the college are not permitted to hold themselves out as

any kind of psychotherapist.

In addition, an anomaly of the "holding out" clause in the Psychotherapy Act has come to my attention. The wording of the clause is unique among health professions legislation in that it does not prohibit non-members of the college from holding themselves out as individuals qualified to practise in a specialty of psychotherapy.

The effect is that unqualified individuals may choose to avoid regulation by using titles such as "family therapist," "cognitive behavioural therapist" or "psychodynamic therapist"; in other words, by combining the title "therapist," which is not protected, with words relating to a specialty of psychotherapy. This loophole serves to undermine the intent of the Psychotherapy Act, which is to ensure that people practising psychotherapy are qualified and accountable.

The solution here is to change the wording of the "holding out" clause to read, "No person other than a member shall hold himself or herself out as a person who is qualified to practise in Ontario as a psychotherapist, registered psychotherapist or registered mental health therapist or in a specialty of psychotherapy." This matches the wording of the "holding out" clauses in the profession-specific acts of all the existing colleges and all the new regulated health professions. The purpose of this change is to strengthen the regulation of psychotherapy in Ontario by discouraging unqualified non-members of the college from using the title "therapist" along with words pertaining to a specialty of psychotherapy.

In conclusion, I respectfully urge members of the standing committee to seriously consider the changes I have outlined. Not to do so, I suggest, will serve to undermine the intent of the Psychotherapy Act and play into the hands of unqualified people who would seek to avoid regulation.

Thank you for your time. I'm happy to answer any questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Rowlands. About a minute per side.

Mrs. Christine Elliott: Thank you for your presentation. I'm just referring to the summary of changes on the back page of your presentation. I'm presuming those are the only three changes that you're proposing to make to Bill 179 as it relates to psychotherapy?

Ms. Joyce Rowlands: Yes, they are. Mrs. Christine Elliott: Thank you.

The Chair (Mr. Shafiq Qaadri): To the government side.

Mr. Bas Balkissoon: I just want to thank you for your presentation. It's quite clear. So if this technical change is made, your organization is very supportive of the bill?

Ms. Joyce Rowlands: Sorry?

Mr. Bas Balkissoon: If the technical problem is corrected—

Ms. Joyce Rowlands: Oh, yes, absolutely, and particularly the primary amendment that's included in bill 179, which is to change one of the two protected titles from "psychotherapist" to "registered psychotherapist." We absolutely support that.

The problem is that in doing it the way it has been done, it leaves the title "psychotherapist" by itself unrestricted—

Mr. Bas Balkissoon: I realize that.

Ms. Joyce Rowland: —and it could be interpreted as being in the public domain and available for anybody to use, which would be a problem for the college and could certainly undermine the effectiveness of regulation.

Mr. Bas Balkissoon: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Rowlands and Ms. Walko, on behalf of the Transitional Council of the College of Psychotherapists and Registered Mental Health Therapists of Ontario.

CANADIAN COLLEGE OF NATUROPATHIC MEDICINE

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters, Mr. De Groot and Mr. Bernhardt of the Canadian College of Naturopathic Medicine, to please come forward. Welcome, gentlemen. I invite you to please begin now.

Mr. Bob Bernhardt: Thank you very much. My name is Bob Bernhardt, the president and CEO of the Canadian College of Naturopathic Medicine, and accompanying me is ND Nick De Groot, who's the dean of the program.

The Canadian College of Naturopathic Medicine wants to thank the Standing Committee on Social Policy for the opportunity to provide feedback on Bill 179. As Canada's premier institute for education and research in naturopathic medicine, CCNM has a keen interest in the regulation of naturopathic medicine here in the province and also in other provinces in Canada. It is vital that the college's students and graduates are able to learn, and ultimately practise, in a jurisdiction that allows naturopathic doctors to work to an appropriate scope of practice. It's our belief that Bill 179 as currently drafted contains omissions which, if not addressed, could lead to significant negative repercussions for the profession and for the practice of naturopathic medicine. There are three issues that I'll address.

One will be that we need to protect the current practice of naturopathic doctors in the province through providing NDs with the unambiguous authority for prescribing, compounding, dispensing or selling a drug as designated in the regulations. Second, as you've heard from the Ontario Association of Naturopathic Doctors, we need to clarify the scope of practice by amending the Naturopathy Act to get rid of the term "naturopathic diagnosis," to make it clear that the controlled act is communicating

a diagnosis. And we need to ensure that NDs have access to the diagnostic tools they require, in particular unambiguous access to lab testing and specimen collection.

The college itself, the Canadian College of Naturo-pathic Medicine, is an educational institution; it's not a regulatory college. It was established in 1978. It's a registered charity. The college receives no direct government funding and employs approximately 100 full-time employees and about another 100 contract and part-time employees. We have an annual operating budget in the neighbourhood of \$12.5 million, and would presumably have an estimated annual economic impact on the GTA of about \$35 million.

We provide an intensive four-year medical program. The only people admitted into the program are those who have a university degree with your typical pre-med prerequisites. We currently have 550 students and we've had 1,611 graduates. Those graduates represent almost a quarter of practising NDs across North America, and in Ontario about 95% of those who are practising have graduated from the college.

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The program itself involves over 4,000 hours of instruction, including 1,200 hours of supervised clinical experience. It's accredited by the Council on Naturopathic Medical Education, which, as I mention here, is in turn recognized by the US Department of Education.

CCNM is also a major GTA health care provider. We have a clinic at the college that provides over 25,000 patient visits per year. In addition, we operate out of five community health clinics in Toronto and we see about another 6,000 patient visits per year there.

Of interest, at our own clinic, when we surveyed the patients, 45% of them said that they use our clinic as their primary care provider, so we'd only assume that the statistic would be there or higher for those who use NDs out in the community.

CCNM also does a great deal of research and we're internationally recognized for it. We have done a number of studies with Canada Post Corp. and the Canadian Union of Postal Workers looking at chronic disease there and naturopathic treatment as compared to traditional treatment for that chronic disease. In particular, we've looked at chronic back pain, we've looked at stress, we've looked at rotator cuff tendinitis, and currently we have a major study looking at cardiovascular risk. In addition, along with Ottawa Hospital, we are looking at the use of melatonin as an adjunctive therapy for cancer for those with non-small-cell lung cancer who have had a portion of the lung removed. We've just completed a study with Health Canada looking at the use of naturopathic medicine, potentially, for helping with some of the issues in aboriginal health care. The research suggests that naturopathic medicine can be particularly efficacious in addressing chronic conditions.

Ultimately, the college's position as a North American leader in research and education related to naturopathic medicine is contingent on our ability to offer students the opportunity to gain not only a top-notch theoretical

education but also broad clinical experience that prepares a graduate for practice throughout Canada and the United States. For that reason, it is important to the college that the regulatory framework in Ontario is supportive of NDs working to an appropriate scope of practice that is aligned with North American best practice. As an academic leader in research and education related to naturopathic medicine, the college has been keen to share its expertise and best practices to support the evolution of strong public policy in the province.

With respect to Bill 179, CCNM eagerly awaited the introduction of Bill 179 with a strong hope that the new legislation would introduce changes to rectify some of the important issues related to NDs' scope of practice that were not resolved with the passage of the Naturopathy Act in 2007. Although the Naturopathy Act, a portion of the Health System Improvements Act, 2007, delivered long-overdue changes to fundamentally restructure the regulatory framework of naturopathic medicine, changes which were strongly supported by the college and by NDs, it did leave some additional issues that had to be rectified.

In particular, we have concern regarding the fact that the Naturopathy Act remains silent on whether naturopathic doctors retain the ability to prescribe within their field of expertise. As the federal government moves to bring an increasing number of natural therapeutic products under restricted schedules, NDs face the very real possibility of being forced to refer their patients to physicians licensed by the College of Physicians and Surgeons of Ontario to simply maintain patient access to the current forms of treatment.

A second issue refers to the confusing reference to the ability of NDs to communicate a "naturopathic diagnosis." There seems to be no consensus, either legal or otherwise, as to what the phrase actually means. Naturopathic doctors communicate diagnoses to patients after extensive assessment based upon traditional medical diagnostics. Such diagnoses differ in no material way from those communicated by nurses, doctors or others who have the legislated right to communicate a diagnosis.

The final significant issue left unresolved in the Naturopathy Act relates to clarifying the ability of naturopathic doctors to order appropriate laboratory tests for their patients. Naturopathic doctors must be able to collect specimens and submit them for analysis in order to be able to complete a diagnosis.

We were encouraged by much of the work of HPRAC. HPRAC is very familiar with the regulation of naturopathic medicine, having previously provided recommendations to the government on the issues in both 2001 and 2006. The Critical Links report follows up on this earlier work and provides an unequivocal message to government that changes were required to the Naturopathy Act to improve the regulation of naturopathic medicine. Given HPRAC's clear recommendation and compelling rationale, it was a real disappointment to the college that the government ignored the body's expert

advice with the introduction of Bill 179. The current version of the bill does not address any of the substantive issues raised in HPRAC's report, and arguably leads to an outcome that is drastically opposed to HPRAC's goal of expanding access to naturopathic medicine while promoting the public interest.

The three specific recommendations are as follows:

Recommendation 1: protect the current practice of naturopathic doctors through providing NDs with unambiguous authority for prescribing, compounding, dispensing or selling a drug designated in the regulations. As the Critical Links report noted, without specific authorized acts granted under the Naturopathy Act, 2007, NDs will not be able to practise to their full scope of practice and their patients will not be able to receive the treatments that they choose and prefer. For this reason, it's imperative that the Legislature introduce changes to Bill 179 that would clearly add the controlled act of prescribing, compounding, dispensing or selling a drug to the ND's scope of practice.

With respect to the education that NDs receive in the area of prescribing, they receive extensive training in the prescribing of botanicals—

The Chair (Mr. Shafiq Qaadri): You have a minute left.

Mr. Bob Bernhardt: Thank you; as well, 70 course hours focused on pharmacology. In addition, there are about 190 hours that look at the use of contraindications and the monitoring of patients who are receiving either botanicals or drugs.

I think I should leave the remainder for questions.

The Chair (Mr. Shafiq Qaadri): Sure. Minimal time, Ms. Gélinas.

M^{me} France Gélinas: In your recommendations, you talked about prescribing, compounding, dispensing and selling a drug. Other people have talked about naturopathic medicine, and basically, what they really want is a lot narrower than all of the drugs. I give the example of narcotics—

The Chair (Mr. Shafiq Qaadri): Sorry, Ms. Gélinas, I will have to intervene. To the government side.

Mr. Bas Balkissoon: Thank you very much for your presentation.

The Chair (Mr. Shafiq Qaadri): Thanks, Mr. Balkissoon. To Ms. Elliott.

Interjection.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Bernhardt and Dr. De Groot, for your presentation on behalf of the Canadian College of Naturopathic Medicine.

COLLEGE OF MEDICAL RADIATION TECHNOLOGISTS OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter to please come forward: Ms. Gough, registrar of the College of Medical Radiation Technologists of Ontario, and colleagues, I presume.

Welcome and please be seated. We'll distribute those for you, and I'd invite you to begin.

Ms. Linda Gough: Thank you. The College of Medical Radiation Technologists of Ontario appreciates the opportunity to appear before the Standing Committee on Social Policy regarding Bill 179. My name is Linda Gough, and I'm the registrar of the CMRTO. With me today is Debbie Tarshis from WeirFoulds, who is the college's legal counsel.

The CMRTO is a regulatory body for medical radiation technologists in Ontario. Our mandate is to serve and protect the public interest through self-regulation of the profession of medical radiation technology. The college regulates more than 6,300 MRTs who provide essential services such as radiation therapy, CT, X-ray, MRI, nuclear medicine and PET scans to Ontario's population. Our members are instrumental in ensuring timely access to the diagnostic and cancer treatment patients need.

The college has three recommendations which we're presenting to the standing committee today. The college also has some suggestions regarding the proposed amendments to RHPA and the Healing Arts Radiation Protection Act, which are set out in the written submission of the college.

The CMRTO's first recommendation is that the government proceed with the proposed amendments to the MRT's scope of practice statement and authorized acts as set out in Bill 179, with the proposed amendments set out in the college's second and third recommendations. The college supports the government's proposed changes to the scope of practice statement for MRTs and the controlled acts authorized to them. The college believes that these proposed changes will provide clarity to the public and other health care practitioners, improve efficiency by maximizing the use of MRTs within interprofessional care settings, improve patient access to state-of-the-art diagnostic and therapeutic procedures, and will update the legislative framework to reflect the current practice of MRTs.

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The proposed amendments to the MRT Act represent the culmination of a process that began in April 2008. Based on the minister's request for advice, HPRAC made a request to the college and the Ontario Association of Medical Radiation Technologists for a submission of a review of the scope of practice for MRTs, being one of the professions identified as being most directly involved in interprofessional care. After extensive consultations with stakeholders, the college and the OAMRT provided a joint submission to HPRAC. In general, HPRAC supported the recommendations set out in the joint submission, as is summarized in the following paragraph from HPRAC's Critical Links report:

"HPRAC has concluded that medical radiation technologists (MRTs) are critical members of interprofessional health care teams. They are valuable technical experts in the safe and effective use of rapidly evolving and highly sophisticated diagnostic and therapeutic

equipment. MRTs provide crucial information to support diagnosis and monitor the progress of treatments. They are also involved in direct patient care through the delivery of therapeutic interventions. HPRAC's review supports the requests for changes in the scope of practice of medical radiation technology as reasonable, since they reflect the daily functions of MRTs in all areas of practice and are supported by their education and training."

The CMRTO's second recommendation is that Bill 179 should be strengthened by reflecting an important aspect of what MRTs do in their practice; that is the significant role of the MRT in the assessment of an individual's condition before, during and after their procedure. The proposed scope of practice statement set out in Bill 179 does not currently reflect this role. The college recommends that the phrase "and the assessment of the condition of an individual related to the procedures" be added to the end of the scope of practice statement.

The college believes that the role of the MRT in the assessment of a patient's condition is a fundamental element of the practice of the profession. The MRT is often alone with the patient, as the interpreting physician, radiologist or oncologist is not present for most procedures. Thus, the safe and effective performance of the procedures by an MRT involves the assessment of whether a patient's condition meets the clinical requirements for the procedure to proceed safely, the assessment of the patient's condition during the procedure, and responding to the patient's physical, medical and emotional needs.

The college's standards of practice for the profession set out the competencies required of MRTs to practise safely. Several of these competencies refer to the assessment of a patient's condition, such as:

—ensure that there are no contraindications present that could harm the patient or would exclude the patient from having the examination;

—making modifications to procedures based on the patient's physical, medical and/or emotional status or needs:

—assess the patient's condition during the course of treatment or procedures and respond accordingly.

I'll now provide some short examples taken from the four specialties of medical radiation technology in which the assessment of the patient's condition by the MRT is a fundamental element of the procedure. The more complete examples can be found in our written submission.

For patients undergoing CT scans, MRTs in the specialty of radiography perform the injection of the contrast media into the patient's veins to enhance the visualization of certain organs. The MRT must identify any contraindications to the administration of contrast media by reviewing the patient's blood test results and obtaining a history of allergies and medical conditions. In this way, the MRT assesses whether the patient's condition will allow the safe injection of the contrast media in accordance with established protocols.

Following the injection, the MRT must constantly assess the condition of the patient for any signs of allergic reaction by monitoring the patient's blood pressure and blood-oxygen levels, and checking whether the patient develops rashes or hives. The MRT must initiate emergency response procedures if a patient suffers any adverse reaction.

MRTs in the specialty of magnetic resonance carefully screen and assess each patient prior to the MRI examination to ensure that there are no dangerous implants or devices which could harm the patient or would exclude the patient from having the procedure. If a patient has a magnetically activated implant or device, such as a cerebral spinal fluid shunt or eye socket implant, he or she cannot undergo an MR exam because there's a high likelihood of altering the function or displacing the implant because of the MR magnetic field.

Certain individuals who undergo magnetic resonance procedures may find the experience associated with great emotional and psychological distress, so the MRT must assess the patient's psychological condition to identify anxiety or claustrophobia to determine whether the patient would benefit from a sedative prior to the procedure.

MRTs in the specialty of nuclear medicine must constantly assess patients undergoing cardiac stress testing, a study to determine the blood flow to the heart muscle. This involves the patient exercising on a treadmill until he or she reaches his or her peak exercise rate. The MRT injects the patient with a radiopharmaceutical which concentrates in the heart muscle. During the procedure, the MRT monitors the patient's heart rate, blood pressure, respiratory rate and ECG to recognize a potential cardiac arrest.

MRTs in the specialty of radiation therapy assess their patients over a course of radiation treatments that may take a few days to a number of weeks. Radiation treatment has a severe effect on the patient's health during the course of treatment, which requires constant assessment. The radiation therapist, being the one health care professional who sees the patient each day, performs this assessment. Radiation therapists must decide when it's inappropriate to treat the patient and to refer the patient to the physician before proceeding. They may also refer the patient to another health professional such as a dietitian if the patient is losing a significant amount of weight.

Our third and final recommendation to the standing committee today relates to the additional requirements for MRTs to be able to perform authorized acts.

The Chair (Mr. Shafiq Qaadri): You have about a minute left.

Ms. Linda Gough: An MRT may not currently perform an authorized act unless a procedure is ordered by a member of CPSO. As a result of the proposed amendments to the scope of practice of other health professionals, Bill 179 amends the MRT Act in order to permit an MRT to apply a prescribed form of energy if it's been ordered by a member of the CPSO or a member

of any other college. However, the language of the proposed amendment refers to the member being ordered rather than the procedure being ordered, and accordingly the college believes that a technical amendment is needed so that the language reflects that it's the procedure being ordered and not the MRT.

We'd like to thank the members of the committee today for listening to us, and if you have any questions, we'd be happy to answer them.

The Chair (Mr. Shafiq Qaadri): I'd like to thank you, Ms. Gough, and your colleague for your deputation and presence on behalf of the College of Medical Radiation Technologists of Ontario.

COLLEGE OF PHYSIOTHERAPISTS OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I would now like to invite our next presenters to please come forward: Ms. Robinson, registrar of the College of Physiotherapists of Ontario, and colleagues, if any. Do you have any written materials for distribution?

Interjection.

The Chair (Mr. Shafiq Qaadri): We received it already. That's fine, thank you. I invite you to please be seated and officially begin.

Mr. Rod Hamilton: Good afternoon. My name is Rod Hamilton, and I'm the associate registrar, policy, at the College of Physiotherapists of Ontario. With me is Jan Robinson, and she's the registrar and CEO of the college.

The college was created under the Regulated Health Professions Act to register physiotherapists for practice in Ontario and regulate them in the public interest. The college has nearly 7,000 member physiotherapists. The college has come before this standing committee to offer its general support for Bill 179, the Regulated Health Professions Statute Law Amendment Act.

The college believes that promoting interprofessional collaboration and recognizing the skills and competencies of Ontario's health professionals through scope changes will improve Ontarians' access to the health care services they need and ultimately improve the health care system for all. The college looks forward to a continued role in implementing these changes.

More specifically, the college would like to offer its support for the proposed changes to the Physiotherapy Act. The college believes that the proposed changes to physiotherapists' scope of practice will enable them to practice to the full extent of their competencies and facilitate their ability to engage in interprofessional collaborative practice.

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The college also supports the additional authorized acts that are being proposed for physiotherapists. These additional authorized acts are within the scope of practice of physiotherapy. The changes will enable physiotherapists to participate more fully in varied models of health care delivery, working with multiple caregivers to deliver integrated, quality care.

However, the college does have a very specific concern about the proposed revision—subsection 4(3)—of the Physiotherapy Act. This subsection is a proposal for an additional requirement that would apply when a physiotherapist needs to perform the authorized act of administering a substance by inhalation to a patient. As the clause is currently drafted, it would forbid physiotherapists from administering a substance by inhalation unless the member has been ordered to perform the procedure by a member of the College of Physicians and Surgeons of Ontario or a member of any other college who is authorized to perform the procedure.

The college believes that physicians or other qualified health professionals should order the substances that patients need when they are to be administered by inhalation. However, instead of permitting physiotherapists to administer these substances once they have been properly ordered, the current wording actually requires physicians to take the extra step of then ordering a physiotherapist to administer the substance. The college believes this requirement will continue to impose significant practical barriers that create inefficiencies in the provision of quality care. The college suggests that the intent of the proposed additional requirement was that the substance be ordered rather than the physiotherapist be ordered to administer the substance.

To resolve this concern, the college suggests that a minor amendment be made to the proposed subsection 4(3). The revised subsection 4(3) might read: "A member shall not perform a procedure under paragraph 7 of subsection (1) unless the procedure has been ordered by a member of the College of Physicians and Surgeons of Ontario, or a member of any other college who is authorized to perform the procedure."

In summary, the college supports the majority of the changes and additions to the RHPA proposed by Bill 179. However, there are some areas that would benefit from additional consideration and clarification. Please see the college's written submission for more information on the college's suggestions.

Thank you very much for the opportunity to offer comments on this important set of proposals. We would be happy to answer any questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hamilton. About two minutes per side, beginning with the PC caucus. Ms. Witmer.

Mrs. Elizabeth Witmer: Basically, you're happy with the changes that are being recommended. Do you want to just go into the supervisor position and some of your recommendations for that new position that's to be created? I know it's creating a little bit of concern for some of the colleges.

Ms. Jan Robinson: I think there has been concern across colleges for sure, and certainly during discussion at our council table as well. I think our college is very strongly in favour of accountability and public accountability related to the interests that we hold and the trust we hold related to the college and its activities.

We were a bit surprised with the wide-sweeping change, particularly given that much of the rollout was something where there was broad consultation around these kinds of opportunities. Our belief is that it would have benefited—these particular clauses would likely have benefited greatly from the opportunity for deliberation around them.

We're currently suggesting that we believe that the current section 5 holds very broad powers for the minister, and we continue to support those. However, should there be a continued desire to want to strengthen that, we believe that that should remain within section 5 and be better linked to some of the parameters and procedural fairness around what that might look like, such as sets of criteria, an opportunity to appeal those sorts of pieces that would generally be about due notice etc.

Mrs. Elizabeth Witmer: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Witmer. Ms. Gélinas?

M^{me} France Gélinas: Thank you for your presentation. It certainly was clear, and I give you my assurance that I will bring forward the changes that you want to subsection 4(3).

I'm also interested in continuing the conversation. Where do you think this idea of the minister being able to appoint a supervisor came from?

Ms. Jan Robinson: I would say, actually, that broadly—in the broader community—there is some confusion around that, as to what the specificity is of what we're attempting to fix. I think that certainly our college and many of my colleagues at other colleges are very interested in understanding what we're trying to correct and fix, knowing that there has been opportunity on occasions in the past where the minister has used section 5 or other means to coordinate discussions and collaborate with colleges. I'd have to quite honestly say, Ms. Gélinas, that I'm a bit unclear about exactly what we are attempting to fix, but knowing that there's obviously a concern around broader accountability schemes in the current environment in which we work, which I think we're happy to be part of a dialogue on.

M^{me} France Gélinas: Okay. And you've basically set out some parameters for the dialogue that would be within section 5 where we would work on developing more accountability. Nobody else knows either, so it's the great big secret out there. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Gélinas, and to the government side.

Mrs. Carol Mitchell: Thank you very much for your presentation. We have no questions at this time.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Mitchell, and thanks to you, Mr. Hamilton and Ms. Robinson, for your deputation on behalf of the College of Physiotherapists of Ontario.

The Chair (Mr. Shafiq Qaadri): I would now invite Ms. Crump and Ms. Elm, on behalf of the Nurse Practitioner Network of the Central East LHIN, to please come forward, if present. Ms. Crump and Ms. Elm of the

Nurse Practitioner Network of the Central East LHIN—going once.

All right. With that, do we have Ms. Kasperksi, the CEO of the Ontario College of Family Physicians, present, either in this room or on the premises? All right.

Do we have Dr. Polgar, Dr. Riedel Bowers and Mr. Turner of the Social Work Doctors' Colloquium, Use of Title Task Force?

Do we have anyone at all in the province of Ontario who would like to come forward and testify? A 10-minute recess.

The committee recessed from 1632 to 1633.

SOCIAL WORK DOCTORS' COLLOQUIUM, USE OF TITLE TASK FORCE

The Chair (Mr. Shafiq Qaadri): I'll reconvene the committee. I would invite you to please, Mr. Turner, Dr. Polgar and Dr. Riedel Bowers, the Social Work Doctors' Colloquium, Use of Title Task Force. Welcome gentlemen; we are pleased to see you.

Thank you for appearing earlier than scheduled and for the trip from next door. You've seen the protocol—10 minutes in which to make your presentation. Please do introduce yourselves individually for the purposes of Hansard recording, and I would respectfully invite you to please begin now.

Dr. Frank Turner: Dr. Frank Turner. Dr. Alex Polgar: Dr. Alex Polgar.

The Chair (Mr. Shafiq Qaadri): The floor is yours, gentlemen.

Dr. Frank Turner: Dr. Polgar and I represent a task force on the use of the title "Doctor." We are social workers who have doctoral degrees from accredited institutions of higher learning who are presently restricted from use of the title "Doctor" in the health care settings where we practise.

We urge this committee to modify sections 33 and 43 (1) of the Regulated Health Professions Act to include social workers with doctorates in the group allowed to use the title "Doctor" when providing health care services in Ontario.

The restriction on the use of the title "Doctor" is an anomaly, specific to Ontario. The restriction has two negative effects: First, it serves to discourage social workers from achieving higher levels of education and competence, and secondly, it fails to acknowledge the link between higher education and training and enhanced quality of service inherent in the level of competence of a doctoral degree.

For example, the Minister of Health and Long-Term Care, David Caplan, recently made a commitment to make mental health and addictions a priority. For the most part, this agenda will be accomplished and implemented by social workers. At a very practical level, frontline social work services in addressing such issues as trauma, stress and relationships, seen all too often within child welfare and mental health settings, are all informed and advanced by doctoral-trained researchers and

clinicians. The restriction on the use of the title "Doctor" is regressive because it negates the evolution of professional programs that has characterized the advancement of knowledge of social workers for over 200 years.

The profession of social work has been responding to the growing complex needs of the people of Ontario for this period. Over 60% of social workers in Ontario provide health care services in hospitals, prisons, psychiatric facilities, mental health clinics, homes for the aged, child welfare and family service agencies, and rehabilitation facilities.

As recently as 1977, there was only one social work doctoral program in Ontario. However, the escalating complexity, severity and magnitude of the problems social workers are required to address impelled social work to rigorously develop its knowledge and skill base. Social work responded to this challenge through increasing accredited, university-based doctoral programs. Today, Ontario has more than four social work doctoral programs, the benefits of which are enjoyed by all the people of this province.

A doctorate, by its very definition, represents a significant contribution to knowledge in a particular discipline. From better-informed practice, professionals and consumers of their services benefit.

Excellence in design and delivery of social work services has been, and continues to be, significantly enhanced by each doctoral dissertation and by the subsequent professional activities of the doctoral graduates. So the profession of social work is evolving, as are the quality of services being provided by all social workers wherever and with whomever they practise.

Regardless of whether we can or cannot use our earned title "Doctor" when we offer or provide health care services, social workers with doctorates will continue to use all their advanced knowledge and skills gained through formal education and continuously developed since our graduation. Our group will continue to strive to advance the services provided by social work through our research endeavours, publications and teachings. We could not and would not do otherwise.

Our concern, however, is for those who come after us. More precisely, our concern is that, in the province of Ontario, there will be increasingly fewer bright, energetic and compassionate people pursuing a doctorate in social work. Our concern is that the prohibition will intensify declining enrolment in social work doctoral programs. Already, social workers with doctorates are leaving the province, seeking jurisdictions where their discipline is actively valued and its natural evolution is unconditionally encouraged, funded and publicly celebrated.

Our concern is also that since the restriction on the use of the title "Doctor" and its reflection on the profession of social work is now widely known, new graduates with doctoral degrees who choose to practise in the health care field will leave Ontario to pursue careers elsewhere. As we noted already, Ontarians who, justifiably, expect the best quality of service from every discipline, including social work, will suffer as a result.

With forecasts of a looming human resource shortage in the coming decade, this restriction on the use of the title "Doctor" places Ontario at a significant disadvantage in attracting highly qualified experts in the health care field. At a time when the downturn in the economy is increasing the need for the services that social workers provide, the restriction on the use of the title "Doctor" also has the potential to limit the immigration of social workers who hold earned doctorates to Ontario. This restriction sends a discouraging message to those considering moving to Ontario from other jurisdictions. This also affects those who may consider an academic post in Ontario since many doctoral-level faculty members also continue to practise clinically.

At this time of socio-economic crisis and associated mental health care needs, increased quality of service is required. We urge the members of this committee to encourage their colleagues and the government to remove the restriction on the use of the title "Doctor" by qualified social workers. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, gentlemen. We have about a minute or so per side, beginning with Madame Gélinas.

M^{me} France Gélinas: I think your presentation was very clear. Thank you for coming. I have no questions. Your request is reasonable and will be put forward.

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Gélinas. To the government side, Mrs. Mitchell.

Mrs. Carol Mitchell: Just a quick question: How many social workers within Ontario would hold a doctorate now?

Dr. Alex Polgar: Approximately 200.

Mrs. Carol Mitchell: Your presentation has been very clear. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Mitchell. To the PC side, Mrs. Witmer.

Mrs. Elizabeth Witmer: Thank you very much for coming before us one more time. I know this is an urgent situation, that we ensure that we would have the appropriate social workers with doctorates in our province to provide support to our communities and our people. You can be assured that our caucus will continue to give you our unqualified support.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Witmer, and thank you, Dr. Polgar and Dr. Turner, for your deputation on behalf of the Social Work Doctors' Colloquium.

NURSE PRACTITIONER NETWORK OF THE CENTRAL EAST LHIN

The Chair (Mr. Shafiq Qaadri): I would now invite our recently located next presenters, Ms. Crump and Ms. Elm, to please come forward on behalf of the Nurse Practitioner Network of the Central East LHIN. Welcome. I'm sure you've seen the protocol. I'd invite you to please begin now.

Ms. Colleen Elm: We are here today representing the nurse practitioners from the Central East LHIN. Two

well-organized nurse practitioner groups exist in our area, the Peterborough nurse practitioner group and the Durham region nurse practitioner group. Together we represent 60 nurse practitioners as active members, with a larger membership that is associated with our group.

Our members work in urban as well as rural practices. We are both community- and hospital-based. Within our geographic area, nurse practitioners work solo in small communities with links to primary health care physicians 45 minutes away. We provide care to First Nations communities, new immigrants and the poorest of the poor in Ontario. You will find us in large urban practices working with multiple providers. In the hospital, we provide care to the most vulnerable population in our area. Several of our members work in specialty areas such as forensic psychiatry, geriatrics and sexual health clinics.

We are a very diverse group, yet we are united in that we cannot properly provide service to the people of Ontario if Bill 179 is passed in its present form. All of our practices are compromised by not being able to prescribe the medications our clients need.

Ms. Leanne Crump: My name is Leanne Crump and I represent the nurse practitioners from the Peterborough region. I graduated from the McMaster University School of Nursing in 1990, and after working 11 years in various capacities, including emergency medicine, palliative care and community health, I chose to return to school and become a nurse practitioner. I attended Queen's University in 2001 and graduated as a primary health care NP in 2004. After graduation, I worked in the underserviced area of the city of Kawartha Lakes and then for the Peterborough family health team.

I currently share a primary care practice with two family physicians, and combined, we care for approximately 4,000 patients. I care for patients from birth to death, with chronic and acute illnesses, and function very similarly to your family physician. However, my emphasis is on education and optimizing health. Our focus is not illness, but prevention.

A major responsibility for the provincial government is to ensure safe, effective health services for the citizens of this province. Many people today cannot access primary health care services in Ontario. They are called the orphan patients. In our area, we know all too well this dilemma, as three years ago we had over 20,000 people without a family physician, or over 25% of our population. The Ontario government, in its wisdom, brought nurse practitioners into the health system. Now we continue to have orphan patients, but that number is only 2,000. Our emergency visits are down and our physician satisfaction is up. Our patients are receiving better and more timely health care.

Ms. Colleen Elm: My name is Colleen Elm and I represent the nurse practitioners from the Durham region. Over my 37 years of being a registered nurse, I've worked in every health care environment possible. I've worked in busy hospital settings, such as the Toronto Hospital for Sick Children, and isolated communities in Nunavut and northern Ontario.

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In 2004, I graduated from Queen's University as a primary health care nurse practitioner. In June of this year, I obtained my Master of Science in nursing from the University of Ottawa. Although I have a special interest in aboriginal health, currently I'm setting up a clinical service for the Brock Community Health Centre in northern Durham.

For two years, the executive director of the Brock Community Health Centre was unable to attract any health care providers to the area, in spite of a large number of unattached patients in the community. Since I like challenges, I decided to see if I could assist with the situation. I was hired eight weeks ago, and on Thursday, September 24, we put an open sign over our clinic door. Without any other advertisement, within two days we had 80 applications from people coming for care.

Our team consists of a physician and three nurse practitioners. It is my belief that the physician would not have been attracted to the community if an experienced nurse practitioner was not present to share the workload. He had certain concerns when considering coming to our community, such as, "Will I be on call 24/7," and, "What type of patients can you manage as a nurse practitioner?"

While certain medical associations seem to want to restrict nurse practitioners in their practice, on a day-to-day basis the physicians we collaborate with want us to work to our full scope of practice.

Ms. Leanne Crump: As of June 2, 2009, there are 1,367 NPs in the province of Ontario. The education and practical experience of these NPs is a resource that, if fully utilized, can have an enormous positive effect on the population's health and the government's bottom line.

NPs are professional health care providers as well as citizens of our communities. When we petition the government to make changes, it's because we want our families and friends to enjoy access to superior health care services. It is also because we know that we have something to contribute to make the system better.

Under Bill 179, people in Ontario will continue to unnecessarily suffer delays and poor access to best-practice medications, because NPs will be expected to continue to function with extremely limited prescribing authority. Every NP in Ontario has to face the situation, on a daily basis, where patients seeing him or her are disadvantaged due to unnecessary legislative restrictions. The legislated list of medications forces us to delay treatment for patients and utilize NP and physician time ineffectively. At a time in our society when the bottom line is tight and the fat is trimmed from each system, failure to provide open prescribing causes waste in this health system.

There are serious consequences for patients when delays or less than optimal treatment occurs simply because of unnecessary barriers. When our busy physician colleagues, working to full capacity, have to be interrupted to order a medication that an NP could have safely prescribed, it is a waste of resources as well as a source

of interprofessional conflict. How many patients could be seen if the nurse practitioner was not waiting in the hall to get her collaborating physician to sign a prescription that he or she has recommended? There are situations where the physician is not on-site and the delay may be a number of days until the physician is present to see a patient.

One might say, "Then use a medical directive to avoid this waste of valuable time." Medical directives are timeconsuming and cumbersome. It is impossible to create a medical directive for each situation that we might encounter as nurse practitioners in hospitals and communities, and the need to review them yearly puts a large strain on nurse practitioner and physician time.

Ms. Colleen Elm: We understand that, as a government body, patient safety is the prime concern in considering if nurse practitioners should have open prescribing. NP safety in prescribing has been demonstrated in Canada and internationally. The Canadian Nurses Association has done a risk analysis of NP prescribers in Canada. This is important to add, because other Canadian provinces already have more liberal legislation concerning NPs' prescribing authority. The results indicate that NPs are safe prescribers.

Ontario was the leader in establishing the extended class nursing role. Now we have fallen behind in allowing NPs to expand their scope of practice and function within our system. As other provinces expand the role of nurse practitioner, their health systems have thrived and not fallen apart, as other lobby bodies would have you believe. Patients are receiving more timely health care and cost savings have been seen.

In the United States, 49 states have authorized nurse practitioners to prescribe on their own signature. A few states restrict nurse practitioners' ability to order controlled drugs such as narcotics, but in 37 states, nurse practitioners have no restrictions and can order controlled drugs as well. The American research concludes that nurse practitioners are safe providers.

Nurses and physicians are two professions that work with diverse populations. Other professions, such as midwifery or optometry, have a focused practice. A nurse practitioner working in a cardiology specialty is familiar with and uses a very different list of drugs than a nurse practitioner working in neonatology. It therefore follows that nurse practitioners have different skill sets, either because of their education—pediatric, adult, primary health care or anesthesiology training—or as a result of their professional development and experiences.

It is for this reason that no list can adequately address the needs of all nurse practitioners and their clients. What is universal to the profession is that nurse practitioners must have the ability to accept and manage consequences of their professional actions.

The Chair (Mr. Shafiq Qaadri): You have about a minute left.

Ms. Colleen Elm: Competency is achieved through rigorous science-based education and training. The College of Nurses of Ontario regulates nurse practitioners

and ensures that ongoing competency is maintained. With these stringent safeguards in place, the public is protected.

Ms. Leanne Crump: As NPs, we consult other professionals—physicians, pharmacists and physiotherapists—when the knowledge base of the NP has been surpassed. This is part of a responsible NP practice. This type of collaboration ensures that the client receives the best care possible, as our physician counterparts do in their practice: If they see a patient who is beyond their scope, they refer them to a specialist. In our case, if we see a patient and do not have the knowledge, skill and judgment to handle this with confidence, we would consult or refer that patient to our physician partner or an appropriate specialist.

Open prescribing does not give any NP the right to prescribe a medication if the NP does not have the knowledge, skill and judgment to manage the consequences of the drug's effects. What open prescribing does is make the health—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Crump and Ms. Elm, for your deputation on behalf of the Nurse Practitioner Network of the Central East LHIN.

ONTARIO COLLEGE OF FAMILY PHYSICIANS

The Chair (Mr. Shafiq Qaadri): I now invite our final presenter of the day, Ms. Kasperski, CEO of the Ontario College of Family Physicians.

Ms. Jan Kasperski: The Ontario College of Family Physicians has been actively participating in the HPRAC process, and the documents that we've brought with us today will certainly show that we very much support the intent of Bill 179. We wish to place emphasis on the need to support interdependent collaborative practices amongst

health care professionals.

Many of the concerns that Bill 179 is attempting to address arose from the critical shortage of family physicians in this province. Family physicians and the patients they serve are very appreciative of the government's many efforts to address the shortage of family physicians in this province. As the educational college representing 9,300 family physicians in this province, we're very pleased with the efforts of the past few years, and they are starting to show great promise. Ontario's medical universities are leading the country in the percentage of medical students who identified family medicine as their specialty of choice this year. Among the universities out west, the average percentage of medical students choosing family medicine residency programs was 27%, in Quebec it was 29%, and in the eastern provinces it was 31%. Here in Ontario, it was 41%, and that's something to celebrate.

In the practice environment, over nine million people are formally enrolled with their own family doctor, and the number of our members who are privileged to work in an interprofessional team environment is growing by the day. Their patients are the true beneficiaries of the type of collaborative care that Bill 179 supports.

However, in the minds of the media and the public, increased scopes of practice for non-physicians is tied to the shortage of family physicians and not to the enhancements in patient care that accrue when physicians, nurses, pharmacists and other health care professionals establish collaborative relationships. A quote in this past weekend's newspaper illustrates this point: "With so many parts of this province suffering an acute physician shortage, surely if a doctor isn't available, a well-trained nurse practitioner is better than nothing?" The government, family doctors and especially nurses do not want to see nurse practitioners described as "better than nothing," nor do we wish NPs to be viewed as physician substitutes. Bill 179 needs to be seen as an enabler of collaborative care.

The Canadian Nurses Association and the College of Family Physicians of Canada released a vision statement two years ago which the OCFP strongly endorses. We envision a health care system in which every Canadian would have the majority of their care provided in a family practice by a family doctor and a registered nurse and/or a nurse practitioner. The vision recognizes that family practices are the bedrock, the very foundation of our Canadian health care system, and studies show that health outcomes are better when patients have their own family doctor and when that care by the family doctor is supported by primary care team members. The key role that RNs and nurse practitioners should play in family practices is highlighted in this vision, and the evidence used to support the vision clearly emphasizes the importance of collaboration in the primary care sector.

The OCFP recognizes that when a doctor or a nurse practitioner works in isolation, the impact on quality patient care can be described as one plus one equals one. When they work in parallel or sequentially, then one plus one equals two. It is only when superb nursing skills combine with excellent medical skills that we end up with the synergy that makes one plus one a three.

The safe prescribing of medications requires training in taking a medical history, performing a physical examination, determining the medical interventions that are needed, and then interpreting results and formulating a differential or a working diagnosis for the patient in each of the clinical presentations. These are the skills that the family doctor brings to the collaborative team.

When we work with pharmacists collectively, we have the ability to effectively monitor adverse drug reactions, provide guidance and advice in regard to the best medication regimes, review chronic disorder prescriptions for a limited period of time, and counsel patients regarding the use of medications, prescribed and over the counter. In other words, one plus one equals three yet again.

Bill 179 could be used as an attempt to create independent practices if expanded scopes of practice are seen as the end goal. The bill needs to be strengthened by ensuring that its language makes it very clear that its intent is not to provide expanded scopes of practices in order to support independent practices and more silos in the system, and the regulations need to be very carefully

construed to ensure that Bill 179 results in fostering true interdependent practices among all health care providers.

The OCFP reviewed Bill 179 through the lens of its ability to support collaborative practices and improve access to care, but with an overlay of concern for patient safety. The sections of the bill that we have reviewed are as follows:

We support the adoption of a new object for the health professional regulatory colleges that makes it clear that each college should develop its own standards of practice but should do so through a process that includes collaboration and consultation with the other colleges.

The appointment of a supervisor for the established colleges, such as the College of Physicians and Surgeons of Ontario or the College of Nurses of Ontario, should occur rarely, if ever, given the commitment of government to self-regulation among the health professionals. The circumstances under which such a supervisor would be appointed need to be clearly delineated.

Remote dispensing should be limited to those areas of the province that are able to establish an acute need for the service, since the personal, ongoing relationship with a pharmacist is an important adjunct to patient safety. Increased powers to prescribe, administer, dispense, compound, sell, mix and use drugs or other substances, as stated in the bill, for each profession requires careful consideration. Each college that is granted added powers should be required to review its implementation plan with an expert committee appointed by the Lieutenant Governor in Council. The committee should review the circumstances when the powers would be needed, the conditions required to ensure patient safety and the methods that would be used to address conflicts of interest, particularly in the arena of prescribing and selling.

Our views on the expanded roles of pharmacists, nurse practitioners and others are well documented in the papers that we have already presented to HPRAC and the minister.

The amendment to allow the Lieutenant Governor in Council to create an expert panel to identify the list of drugs and other substances that various professionals would be allowed to prescribe is very much supported by the OCFP and seen as a key factor in patient safety. A similar expert committee should be established to review

and guide the safe implementation of additional authorized acts to ensure that the process is anchored in concerns regarding patient safety and is a model of collaboration and consultation among the colleges. Again, the documents that we have provided document our concerns in this area.

The powers afforded to HPRAC will ensure that the minister receives required advice and that there is transparency in the activities conducted by HPRAC.

The requirements that colleges make team-based care a key component of their quality assurance programs to ensure ongoing competence of registered health professionals is very much supported by the college. Again, an expert panel would be helpful in assisting colleges to add rigour in the areas of maintenance of competency for all professionals.

Given the increased risks of liability in the provision of team-based care, all health professionals should be required to have personal professional liability insurance—

The Chair (Mr. Shafiq Qaadri): You've got about a minute left.

Ms. Jan Kasperski: —but we like the term "liability protection" rather than "insurance." It seems to be a much more appropriate term since it implies responsibilities to protect not only the individual professional but other individuals and organizations that may be impacted if a problem occurs. The language seems to indicate that it would be the colleges themselves that would be responsible for providing the insurance language. We may need to look at that.

In summary, the college very much supports Bill 179 in principle and we definitely see its value. If used appropriately and if good regulations are in place, it will support the movement toward true interprofessional collaboration among all of us.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Kasperski, for your deputation on behalf of the Ontario College of Family Physicians.

That brings to a close our deputations for today. If there is no further business before the committee, we're adjourned until 4 p.m. in this room tomorrow.

The committee adjourned at 1703.





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Tuesday 29 September 2009

Standing Committee on Social Policy

Regulated Health Professions Statute Law Amendment Act, 2009

Assemblée législative de l'Ontario

Première session, 39^e législature

Journal des débats (Hansard)

Mardi 29 septembre 2009

Comité permanent de la politique sociale

Loi de 2009 modifiant des lois en ce qui concerne les professions de la santé réglementées



Président : Shafiq Qaadri Greffier : Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Tuesday 29 September 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Mardi 29 septembre 2009

The committee met at 1558 in committee room 1.

REGULATED HEALTH PROFESSIONS STATUTE LAW AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT DES LOIS EN CE QUI CONCERNE LES PROFESSIONS DE LA SANTÉ RÉGLEMENTÉES

Consideration of Bill 179, An Act to amend various Acts related to regulated health professions and certain other Acts / Projet de loi 179, Loi modifiant diverses lois en ce qui concerne les professions de la santé réglementées et d'autres lois.

Le Président (M. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette réunion du Comité permanent de la politique sociale à l'Assemblée législative. Colleagues, I call to order this meeting of the social policy committee. As you know, we're here to deliberate on Bill 179. We have a number of presenters.

Just for the protocol for all presenters: Everyone will have 10 minutes in which to make their presentation. Should any time remain within those 10 minutes, they'll be distributed evenly amongst the parties for questions and comments and cross-examination. The times will be vigorously and precisely enforced in order to accommodate all the various members. I think we have more than 60 presenters or so coming to us over the next several days. We also have an overflow room next door, I'm told, because it was standing room only here yesterday.

CANADIAN SOCIETY OF DIAGNOSTIC MEDICAL SONOGRAPHERS

The Chair (Mr. Shafiq Qaadri): With that, I would now welcome our first presenters, Mr. Boles, president, and Ms. Foran, executive director, of the Canadian Society for Medical Diagnostic Sonographers.

Just before officially beginning your time I once again would like to welcome, on behalf of the committee, and by extension on behalf of the people of Ontario, one of our former colleagues, Richard Patten, member of provincial Parliament from Ottawa. So, welcome, Mr. Patten. I would now invite you all to please begin.

Mr. Kim Boles: Good afternoon, ladies and gentlemen. Thank you for taking the time to listen to us this

afternoon. As Mr. Qaadri has said, my name is Kim Boles. I'm the president of the Canadian Society of Diagnostic Medical Sonographers, and also a practising sonographer. With me is Kathleen Foran, who is the executive director for the Canadian Association of Registered Diagnostic Ultrasound Professionals and is also a practising sonographer.

CSDMS represents approximately 2,500 ultrasound professionals nationally and includes practising sonographers, technical representatives, physicians, educators and students. CARDUP certifies approximately 3,100 sonographers throughout Canada.

Bill 179 has an important impact on the way health care will be delivered in Ontario. It seems that in most areas, CSDMS and CARDUP believe that the proposed legislation will have a positive impact. However, we believe that in some cases it goes too far and puts Ontarians at serious risk. We strongly believe that improving access to health care should not mean reducing the quality of care provided.

Ultrasound professionals, also called sonographers, go through extensive training and are certified to perform diagnostic ultrasounds. This training, provided at a number of postsecondary institutions throughout Ontario, is rigorous and usually takes over two years. Diagnostic ultrasounds are crucial in determining important medical diagnoses such as the development of the fetus, the existence or extent of a cancer, or the presence and severity of vascular and cardiac diseases.

Well-known organizations such as the Canadian Association of Radiologists and international experts such as Professor Taylor from Yale University recognize that sonographers play a crucial role in the interpretation of ultrasound images, which leads to a diagnosis. As you can understand, this cannot be left in the hands of someone without the proper training.

Ms. Kathleen Foran: This partially flawed legislation puts Ontarians at risk of misdiagnosis. This patient safety issue needs to be addressed in Bill 179 in the form of an amendment.

Misdiagnosis may lead to the patient following the wrong treatment for his or her ailments while the real issue is not properly addressed. Who will be held accountable if someone dies because a person without the proper training is responsible for a misdiagnosis? Rather than having to answer that question, we would prefer to be proactive and propose solutions. We would propose to

amend paragraph 5.1(1)4 by adding to the sentence "Applying or ordering the application of a prescribed form of energy" the following words: "as long as the person has the appropriate training and certification in the application of specialized forms of energy from a recognized post-secondary institution or its equivalent."

It is appropriate to have health care professionals with the proper training perform complicated procedures. However, having people without the appropriate training perform procedures for which they are not trained opens the door to very negative consequences for patients.

We know that the government intends to look at drafting regulations following the adoption of this bill. We believe that it would be more prudent to enshrine the requirement for training in the legislation.

Alternatively, the government may want to draft regulations requiring registered nurses to go through the required training and certification to perform diagnostic ultrasound examinations, as provided today by Ontario post-secondary educational institutions or their equivalent.

The government side has a chance to clearly state that these provisions will be included in the regulations. Will they do so today in this committee? Again, we would prefer a strong amendment to this legislation ensuring that Ontarians' health is protected by having the properly trained professionals look after them.

The Chair (Mr. Shafiq Qaadri): Thank you very much. You've left a generous amount of time for questions. We'll have about two minutes per side, beginning with the PC caucus. Ms. Witmer.

Mrs. Elizabeth Witmer: Thank you very much for your presentation. Now, if I understand it correctly, you're not opposed to the expansion of the scope of practice but you're wanting this amendment added in order to protect the safety of the patient. Is that right?

Mr. Kim Boles: That is correct. We want appropriate training, education and certification to be included in the competency profiles for nurses in the extended practice.

Mrs. Elizabeth Witmer: Okay, and that's the only group you're referring to because of what is—

Mr. Kim Boles: It's the only group of concern to us in Bill 179, yes.

Mrs. Elizabeth Witmer: What type of training and education do you see being necessary? I think you've indicated here that your own professionals receive at least two years of training.

Ms. Kathleen Foran: There's a national competency profile for sonographers that basically says what an entry-level person practising sonography should be doing. We would like to see that incorporated in the education requirements for nurses in the extended classes. That's our first and foremost concern. The length of time that it takes them to complete these competencies to be at an entry level would be entirely up to them.

Mrs. Elizabeth Witmer: Okay, so they would be developing their own program?

Ms. Kathleen Foran: They have programs in place as nurse practitioners. We would just want to ensure that the competency profiles to perform sonography are included.

Mr. Kim Boles: It would seem to us that they would probably piggyback onto programs which currently exist in the province.

Mrs. Elizabeth Witmer: All right. Thank you very much.

Mr. Kim Boles: Thank you.

Le Président (M. Shafiq Qaadri): Merci, madame Witmer. Je passe la parole à M^{me} Gélinas.

M^{me} France Gélinas: Merci. I want to make sure I understand. Under Bill 179, the way it is written now, nurse practitioners are in an extended class and will be allowed to order ultrasounds, but I didn't think they would be allowed to perform them.

Mr. Kim Boles: And apply forms of energy, which leaves—it's wide open. Not only can you order but you can also perform the examination, which we feel is inappropriate, particularly without appropriate training and certification.

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Ms. Kathleen Foran: In the bill, as it stands right now, it would allow nurse practitioners to order the ultrasound, do the ultrasound scan and communicate the diagnosis, without any training.

M^{me} France Gélinas: Okay. So I take it that you don't have any problem with them requesting an ultrasound.

Mr. Kim Boles: None whatsoever.

M^{me} France Gélinas: You have a problem with doing the actual ultrasound, if they haven't got the proper training.

Mr. Kim Boles: We would consider that their ability to order the examination would be a designated act from the College of Physicians and Surgeons of Ontario. It's the application of the form of energy—in this case, ultrasound—that we have a problem with, without expansion of their existing competency profiles.

M^{me} France Gélinas: Thank you.

The Chair (Mr. Shafiq Qaadri): To the government side, Mr. Balkissoon.

Mr. Bas Balkissoon: Thank you very much for your presentation. Since you're raising the issue with nurses only at this time—and I guess legislation can always change—do you see that this could be adequately achieved through the college of nurses, that their standards and requirements for certification to perform this process would be part of their certification and only those who are trained would be allowed to practise?

Mr. Kim Boles: I would be concerned that a regulatory body or the association would set their own standards and police their own standards. I would like to see something in legislation requiring them to do so.

Mr. Bas Balkissoon: But currently don't most of the colleges set their own standards and police them—

Mr. Kim Boles: They set their own standards; they do. That's part of the thing. But you're setting your own training requirements; the whole routine. It just has to be a mandatory requirement. The colleges would be—the weakness in that system is that they're always allowed to make their own changes without—

Mr. Bas Balkissoon: So you don't view this legislation similar to others, that the legislation enables the colleges to do that type of work on behalf of the government to certify their people, to police their people and ensure the right training? Even liability insurance is protected. You don't support that at all?

Mr. Kim Boles: No, I do support that, but what I'm saying is that without the appropriate language in the bill, there is no requirement for them to do so

there is no requirement for them to do so.

Mr. Bas Balkissoon: Okay. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thanks, Mr. Boles and Ms. Foran, for your deputation on behalf of the Canadian Society of Diagnostic Medical Sonographers.

ONTARIO MEDICAL ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I now invite Mr. MacLeod, president-elect of the Ontario Medical Association, and colleagues. Welcome. I would invite you to please begin now.

Dr. Mark MacLeod: Mr. Chairman and members of the committee, my name is Mark MacLeod. I am president-elect of the Ontario Medical Association. I'm a practising orthopaedic surgeon in London, Ontario, and I'm an associate professor of orthopaedic surgery at UWO.

On behalf of Ontario's doctors, I would like to begin by thanking the committee and its members for the opportunity to be here today and to continue to lend our voice to this important discussion about the future of health care in this province.

My comments today will focus on several key points in Bill 179. We have also submitted to you a detailed

written response for your review.

With me today is Ada Maxwell, senior policy analyst at the OMA.

The OMA believes that every Ontarian deserves to have access to the care and expertise of a physician. That being said, we also recognize the value of inter-professional care. We support initiatives that enhance the ability of health care professionals to work to the full scope of their responsibility as long as patient safety is protected. When physicians, nurse practitioners, pharmacists, dietitians and others work together, we can deliver a more comprehensive level of care to our patients than when we work in silos.

The OMA endorses several proposals in this bill. We agree that the Regulated Health Professions Act should set parameters for HPRAC's activities. As a body that advises the minister, HPRAC should be directed by the minister. We are also pleased that the minister has not adopted HPRAC's proposed regulatory oversight body.

The OMA also agrees that mandatory liability cover-

age for all health professionals is necessary.

Finally, we encourage the government to pursue an independent expert committee to review proposed drug lists for colleges with prescribing authorities.

From the OMA's perspective, successful interprofessional care means that mechanisms are in place for ongoing communication amongst and between caregivers. It means that we foster respect for the contributions of all professionals within this group. Most importantly, it means that our patients are receiving safe and effective care.

With those principles in mind, I would like to turn to the topic of nurse practitioners. Physicians have practised in some type of collaborative style with nurses for decades. One only has to look at our province's sharedcare pilot projects with nurse practitioners based in feefor-service office settings to see that good things can happen when health care providers complement one another, not replace one or the other.

In terms of nurse practitioners prescribing, it is not the OMA's intention to recommend regulatory practice standards for other self-regulated professions. However, as a matter of patient safety, we do feel that the nursing council should welcome a ministerial expert drug committee to support it in the regulatory function.

We have no objection to nurse practitioners casting fractures; the critical issue for us is assessing the injury to make a correct decision about treatment. As an orthopaedic surgeon, I can assure you that there are significant differences between open and closed reductions, two of the techniques that we use to treat fractures. An open reduction involves making an incision in the skin, manipulating the fragments and directly stabilizing those fragments with implants. Closed reduction means just that: No incision is made, the fracture is manipulated indirectly, and then a cast is usually applied. Open techniques are often the best option but can only be performed by a physician. I am worried that a nurse practitioner will see a patient and decide to treat a fracture with a closed technique when an orthopaedic consultation would have revealed that an open reduction was indicated. Inappropriate use of a closed reduction technique could result in the loss of function or future unnecessary deterioration. This is a good example of the kind of problem our patients would face if nurse practitioners acted without proper consultation with physicians.

One final comment on nurse practitioners: There has been significant discussion around allowing nurse practitioners to admit patients to hospitals. The OMA supports the government's decision not to take this step. While this issue is not directly discussed in Bill 179, we anticipate further debate on this point. Hospital admission is reserved for patients whose medical condition is sufficiently serious or unstable to require in-patient care. It is important for patient safety and resource utilization that every in-patient admission be under the authority of a physician.

I would like to offer a few brief comments on the proposed changes to the Pharmacy Act. First, as I mentioned, the OMA believes that communication between health care providers is key. We suggest that an integrated electronic medical record system is an important preliminary step before we have multiple health care providers prescribing. Under Bill 179, pharmacists would be able to adjust, adapt or extend prescriptions. While we

appreciate that this does not mean that pharmacists would have broad prescribing rights, we are troubled by lingering issues around patient safety.

If you are a diabetic patient, your family doctor will recommend how often you should test your blood sugar levels. Testing times are based on the kind of medication your family doctor has prescribed and on how well your sugar levels are controlled. You and your family doctor spend time to carefully map out your treatment plan. Now imagine that, instead of following your physician's plan of care, as a patient you walk into a pharmacy and have your blood sugar level tested, and your medications are altered by the pharmacist. You now have two separate treatment plans. This may be confusing for you as the patient, and it will make it extremely difficult for your family physician to accurately monitor your progress in your diabetes management. While we think that pharmacists can and should play a more active role in the health care system, we do not think that promoting disconnected practice silos is the right way to go.

1620

We also see an issue around when physicians are informed about changes to patient prescriptions. There has been little discussion around whether a pharmacist should consult a physician before altering a prescription or whether notifying a doctor after the fact is sufficient. Certainly, these decisions hinge on a number of factors, but this is a critical issue that needs attention before changes are implemented.

One final comment: As pharmacists take on more significant roles in patient management, they will have to develop appropriate record-keeping skills to ensure patient safety. At this time, physicians can be required to keep patient records for up to 28 years.

When it comes to inter-professional care, physicians have worked based on the premise that we are all striving to deconstruct silos of care. If that is our goal, we strongly believe that we should prevent silos at the professional level by maximizing opportunities for interprofessional collaboration.

We are pleased that the government has seen fit to continue discussion on some of the outstanding issues in this bill, and we hope these issues will be addressed in the coming weeks. We look forward to seeing the amendments to this bill and the draft regulations as you conclude your committee hearings.

The Chair (Mr. Shafiq Qaadri): Thank you, Professor MacLeod. A brisk 40 seconds each. Madame Gélinas.

M^{me} France Gélinas: Pleased to meet you, Dr. Mac-Leod. I was glad you mentioned that you support intercollaborative care and that, really, through regulation and legislation, we should make that easier. Some of your colleagues, though, talk about inter-collaborative care always governed by a physician. Do you agree?

Dr. Mark MacLeod: First of all, we support our professional colleagues. We think that all of the health care professionals in this province contribute signifi-

cantly towards health care. We support a collaborative model of care—

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Gélinas. Mr. Balkissoon.

Mr. Bas Balkissoon: I want to thank you very much for taking the time to give us your input.

The Chair (Mr. Shafiq Qaadri): Ms. Elliott.

Mrs. Christine Elliott: Thank you very much, Dr. MacLeod. I'm just wondering if you have any specific recommendations for amendments that you will be submitting to us for consideration.

Dr. Mark MacLeod: I'm going to let Ada respond.

Ms. Ada Maxwell: In our written submission, there are suggested amendments. Not specific wording, but we also suggest that regulations could deal with some of the issues we've put forward.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Elliott, and thanks to you, Professor MacLeod and Ms. Maxwell, for your deputation on behalf of the Ontario Medical Association.

ONTARIO COLLEGE OF SOCIAL WORKERS AND SOCIAL SERVICE WORKERS

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenters, Ms. McDonald, Ms. Birnbaum and Ms. Tarshis of the Ontario College of Social Workers and Social Service Workers. Welcome. I'd also ask you to just please introduce yourselves individually for the purpose of Hansard recording, and I'd invite you to please begin now.

Dr. Rachel Birnbaum: Good afternoon, Mr. Chairman, ladies and gentlemen. My name is Dr. Rachel Birnbaum. I'm the first vice-president of the Ontario College of Social Workers and Social Service Workers. With me today is the registrar of the college, Glenda McDonald, and the legal counsel for the college, Debbie Tarshis. I wish to thank the members of the committee for agreeing to hear our presentation this afternoon.

As you know, the college is the regulatory body for social workers and social service workers in Ontario and has approximately 15,000 members. The college will focus our presentation on the proposed amendments to the Regulated Health Professions Act, the Psychotherapy Act and the Social Work and Social Service Work Act, which will permit members of certain professions to use the title "psychotherapist" if certain conditions are met. The college strongly supports these amendments.

The college is particularly pleased that Bill 179 recognizes the key role that members of this college play in the delivery of psychotherapy services to Ontarians and enables them to continue making that contribution by being permitted to use the title "psychotherapist." These amendments are consistent with the college's submission to this committee on the Health System Improvements Act, which recommended that social workers be permitted to use the restricted title "psychotherapist," provided that this title is used in conjunction with the

restricted titles "social worker" or "registered social worker."

As members of the committee are aware, once the Health System Improvements Act is fully in force, psychotherapy services will be provided by qualified professionals belonging to a number of different regulated professions. The public associates the provision of psychotherapy services with the title "psychotherapist." The college strongly supports the government's initiative in Bill 171 to increase the protection of the public of Ontario by permitting the use of the title "psychotherapist" by members of those professions authorized to perform the controlled act related to psychotherapy, provided that the members also identify which profession they belong to.

However, the college requests that the committee consider a relatively minor technical amendment to Bill 179 as set out on page 3 of our written submission, which I believe you all have. The proposed section 47.2 of the Social Work and Social Service Work Act would read as follows:

"Despite section 8 of the Psychotherapy Act, 2007, a member of the college who is authorized to perform the controlled act of psychotherapy may use the abbreviated title 'psychotherapist' if the member complies with the following conditions, as applicable:

- "1. When describing himself or herself orally as a psychotherapist, the member must also mention that he or she is a member of the Ontario College of Social Workers and Social Service Workers, or identify himself or herself using the title restricted to him or her as a member of the college.
- "2. When identifying himself or herself in writing as a psychotherapist on a name tag, business card or any document, the member must set out his or her full name, immediately followed by the following, followed in turn by 'psychotherapist':

"i. the restricted title that the member may use under this act."

The college believes that the current option for members to place the name of the college after their name and before "psychotherapist" in written documentation will be cumbersome and potentially confusing to the public and proposes that this option be deleted. The college believes that the use in written documentation of the lengthy title of the college followed by "psychotherapist" may also lead a member of the public to believe that the member is employed by or holds an official position at the college. The amendment proposed by the college is also consistent with the registration regulation made under the Social Work and Social Service Work Act that the member be required to use the restricted title.

The college believes that the amendments we are recommending to Bill 179 will ensure that the public interest will continue to be protected by making it very clear which members of the Ontario College of Social Workers and Social Service Workers are authorized to call themselves psychotherapists in Ontario.

The college supports the important initiatives that the government has undertaken in Bill 179 to permit those regulated professionals qualified to provide psychotherapy to use the title "psychotherapist" and to hold themselves out as qualified to provide psychotherapy.

Thank you for the opportunity to make this submission to the standing committee and for your consideration of

the college's recommendations.

The Chair (Mr. Shafiq Qaadri): Thank you very much. About two minutes or so per side, beginning with the government. Mrs. Mitchell.

Mrs. Carol Mitchell: Thank you for your presentation. I just have a quick question. You know that this bill is about increasing access to our health care professionals and collaboration and encouraging that. How do you see your role going forward in working with your members? How do you see the ability to enhance the collaboration from your association? Do you see that as part of your role, figuring out how you can improve the access to services?

Dr. Rachel Birnbaum: I'd like Glenda as the registrar to answer that, please.

Ms. Glenda McDonald: First of all, we're a regulatory body and not an association—

Mrs. Carol Mitchell: I know, I know.

Ms. Glenda McDonald: —so I just want to clarify that. We have been very involved in the government initiatives on inter-professional collaboration spearheaded by the Ministry of Health and Long-Term Care, although, as you probably realize, we're accountable to the Ministry of Community and Social Services. So we have been working very hard with our own ministry as well as with the Ministry of Health and Long-Term Care to ensure we are included as members of the interprofessional family, if you will, to enhance collaboration.

Without doing a commercial, inter-professional col-

laboration is something that's fundamental—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Mitchell, Ms. Elliott.

Mrs. Christine Elliott: Thank you very much for your presentation. I just want to confirm that the primary reason for advancing this sort of technical amendment is really to make it more clear to the public what they're dealing with.

Dr. Rachel Birnbaum: Absolutely.

Mrs. Christine Elliott: Okay—very reasonable. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Elliott. Madame Gélinas.

M^{me} France Gélinas: A very good presentation, and easy to understand. I find it's a relatively minor amendment that you're asking for and it will make things clearer, so you will have our support.

Dr. Rachel Birnbaum: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Gélinas, and thanks to you, Ms. McDonald, Dr. Birnbaum and Ms. Tarshis, for your deputation and presence here today on behalf of the Ontario College of Social Workers and Social Service Workers.

1630

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I'd now like to invite Mr. Tulsiani of the College of Physicians and Surgeons of Ontario, known as the CPSO to its members and to its colleagues. Welcome, and I'd invite you to please begin now.

Dr. Rayudu Koka: Thank you, Mr. Chairman and the members of the committee, for this opportunity to appear before the committee. I am Ray Koka, president of the college. I am a psychiatrist practising in Sudbury and the surrounding areas. With me today are Rocco Gerace, our registrar; Maureen Boon, associate director of policy; and Norm Tulsiani, government relations adviser.

Overall, we are supportive of the legislation, particularly efforts to ensure greater inter-professional care. We do, however, have some very significant areas of concern. The first is the troubling and unexpected supervisor and audit provisions. The second is ensuring that inter-professional care is delivered in a coordinated fashion. I will also provide brief comments on some other aspects of the bill.

Supervisor and audit provisions: The college is very concerned about these provisions because they give the minister a broad discretion to take over a self-regulating body for virtually any reason. The college regulates the medical profession in the public interest and is committed to accountability. However, we believe these new powers are unnecessary because the minister already has wide power under section 5 of the RHPA. The minister has the authority, for example, to require health colleges to do anything that, in the minister's opinion, is necessary or advisable to carry out the intent of the RHPA, the health profession acts or the Drug and Pharmacies Regulation Act.

In addition, there are numerous oversight mechanisms in place to ensure accountability. These include, but are not limited to, reviews by the Fairness Commissioner of our registration policies; an appeals process for our registration and complaints decisions to HPARB; public consultations on all our regulations and policies; cabinet approval of all regulations; open council and discipline hearings; and the highest proportion of government-appointed members on our boards. Given the broad range of oversight tools already available to the minister, we recommend that this provision be removed from the bill.

If the committee chooses not to remove the supervisor provision, we recommend that it be amended to provide that this extraordinary power only be used in exceptional cases where a college does not comply with the minister's request under clause 5(1)(d) and the minister is satisfied that there is a risk to patient safety.

A decision to undertake such a dramatic intervention into the affairs of a regulatory body of a self-governing profession requires careful consideration. We are concerned, for instance, that extensive media coverage of a particular case could result in a rush to judgment and an inappropriate decision to appoint a supervisor or auditor. For this reason, we believe that including some procedural safeguards would be useful.

The college recommends that the supervisor provision be amended to require the minister to first turn to existing powers under section 5 to address any issues relating to a regulatory college. Only where the college does not fulfill the requirements set out in clause 5(1)(d), and where the minister is satisfied that patient safety is at risk, would the minister move to appoint a supervisor. Before doing so, the minister would be required to follow certain procedural steps:

—provide written notice to the affected college—not less than 60 days—which outlines the requirement that the college did not fulfill;

—give the college an opportunity to make written submissions;

—give the college an opportunity to comply with the ministerial directions and avoid the appointment of a supervisor; and

—ensure that the powers granted to the supervisor are consistent with those which are necessary to address the requirements outlined in the minister's notice and do not reach over into other areas.

The college's proposed amendments are attached as appendix A to our full submission.

We believe that the audit provision should be removed as health colleges are independent, self-funded bodies that do not rely on public funding. The Royal College of Dental Surgeons of Ontario, the College of Nurses of Ontario and the Ontario College of Pharmacists support this recommendation, and also the amendments that are contained in our submission.

Inter-professional care and scope expansions: The college has consistently supported inter-professional care as a way for all health care professionals to work collaboratively for the benefit of the patient. Care must be provided in a way that breaks down silos, ensures optimal care for patients and avoids duplication and higher costs. We caution that focusing on specific scope details while neglecting broader systemic issues may entrench professional silos and result in fragmented care.

The college supports the bill's proposed scope expansions in general, provided they are consistent with the knowledge, skill and judgment of the professionals involved, support a truly collaborative, team-based approach and are subject to rigorous regulatory structures. Our submission outlines some of the challenges and potential remedies.

Other areas, if I may touch upon them: On the issue of prescribing, the college believes prescribing must only be done in collaboration with a health professional who has the range of controlled acts that are essential to assessing the health of the patient as a whole, rather than a particular ailment or injury.

With respect to pharmacists, Bill 179 simply states that pharmacists are authorized to prescribe drugs. We note that this is inconsistent with the recommendations of HPRAC and the substance of the PAPE; that is, the Pharmacist Authorization of Prescription Extensions agreement. The college believes that pharmacists have a key role to play in managing medication but this must occur in collaboration with a prescriber, and only after a diagnosis has been made. We believe that significant previous work in this area must be included in the regulation.

We endorse the requirement for a unique identifier for health professionals and support the use of MINC, the Medical Identification Number for Canada, for physicians. Bill 179 is not clear that MINC is the intended model for physicians and could be amended to state this

explicitly.

The college believes that all professionals who dispense drugs should meet the same basic standards and that the standards in the Drug and Pharmacies Regulation Act should be the benchmark.

The college is also seeking two additional amendments to the RHPA that will allow us to fulfill our

mandate to protect the public more efficiently:

(1) Amend the requirement that the college investigate every complaint received, and allow the college to decline to investigate a complaint if it does not relate to the professional misconduct, incompetence or incapacity of a member and does not raise a public safety issue; and

(2) Allow non-council members of the public to be counted towards a quorum for the ICRC and discipline committees, to avoid past situations where the college has not been able to achieve a quorum due to the unavailability of public council members.

Our written submission covers these and other issues in greater detail. Thank you very much for the oppor-

tunity to present to the committee.

The Chair (Mr. Shafiq Qaadri): Thank you, Dr. Koka, and your colleagues. We have about 40 seconds

again, beginning with the PC side. Ms. Witmer.

Mrs. Elizabeth Witmer: Thank you very much for your presentation. I know that the issue of a supervisor has been of concern to yourselves and other colleges as well. I'd just like to ask you briefly: What would be the implications to public safety if a supervisor was appointed to take all of or part of the college's mandate?

Dr. Rayudu Koka: Maybe Rocco could answer that.

Dr. Rocco Gerace: The concern is whether or not there will be the ability to appreciate the practice of medicine. As you know, the profession has long taken that responsibility, understanding what doctors do and being able to adjudicate in areas of misconduct and incompetence. We're not sure that an independent individual would have that ability.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms.

Witmer. To Madame Gélinas.

M^{me} France Gélinas: Following what you've just said, what already exists within your college to ensure the accountability of your college?

Dr. Rocco Gerace: There are a host of accountability frameworks that we have. For example, with public complaints, there exists the Health Professions Appeal

and Review Board, which has the authority to review any complaint, whether it's appealed by a patient or a doctor.

In respect to the discipline committee, there is the ability to appeal to Divisional Court or seek judicial review of decisions. Decisions of the registration committee, similarly, can be appealed to the Health Professions Appeal and Review Board. More generally, there is the activity of the Fairness Commissioner, doing audits on registration practices—

The Chair (Mr. Shafiq Qaadri): Thank you. The

government side. Ms. Mitchell.

Mrs. Carol Mitchell: Thank you very much for your presentation. You certainly have made your position very clear on the supervisor's position, but you also have brought forward recommendations that you are proposing instead of the supervisor's position. So, as laid out in your presentation, you have about 30 seconds to expand.

Dr. Rocco Gerace: I think just very briefly, if the supervisor provision is going to stay in, there should be a more defined trigger and there should be a series of steps through which the minister has to proceed in order to order a supervisor. We've outlined those steps in our submission. There should just be some control—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Mitchell. Thanks to you, Drs. Koka and Gerace, and to Mr. Tulsiani and your colleague for your deputation, written and by coming as well, on behalf of the College of Physicians and Surgeons of Ontario.

MARVIN SIEGEL

The Chair (Mr. Shafiq Qaadri): I would now like to invite our next presenter, Mr. Marvin Siegel, who I understand comes to us in a private capacity.

Mr. Marvin Siegel: What capacity, sir?

The Chair (Mr. Shafiq Qaadri): A private capacity as a citizen of Ontario, for which you are of course welcome.

Mr. Marvin Siegel: I have been called worse.

The Chair (Mr. Shafiq Qaadri): You may begin.

Mr. Marvin Siegel: Thank you for allowing me to appear here before you today. It is not my first time appearing before one of these committees or before HPRAC and making submissions to them.

I have not submitted a brief or a submission in the form submitted by everyone else. Unlike everyone else who has appeared before you today, I do not represent any regulated health profession, nor do I represent any

organization. I totally represent myself.

Briefly as to background, I have experience in appearing before discipline committees of the College of Physicians and Surgeons of Ontario on motions. I have never represented anyone at that college; they're well-represented by the Canadian Medical Protective Association. I have brought motions under section 41.1 of the code, which I believe was the first one brought to any regulated health profession college since 1994, when the act came into effect. I have appeared on behalf of a

member of the college, a denturist. I have made motions before that college and also before the Ontario College of Pharmacists on numerous matters. I do believe I have reasonably extensive experience, over the last 14 years, in dealing with the Regulated Health Professions Act and the procedural code.

I will say this: I will not be making any submissions with regard to any of the other pieces of legislation that affect the health professions or the interaction between the various health professions. I appreciate that one can destroy one's credibility by making a slight joke, but the most attractive lady who's the pharmacist who provides me with my pharmaceuticals—I'd be most happy for her to inject me if she ever had to do so in the event of the swine flu epidemic.

If I may go on, I'm going to break down my submissions into various categories: Firstly, how did I get started on this business? A medical doctor was falsely billing OHIP on my behalf: billing OHIP for treating my family with family counselling, which did not exist; he did not ever meet any of my daughters when he started billing OHIP for family counselling. He allegedly was providing me, in billing, for individual in-patient psychotherapy which did never occur. I have never been an inpatient in a hospital until such time as I broke an arm playing hockey while at law school.

Very simply, I want to cover certain issues. Firstly, I would direct you people to read Jane Jacobs's book Dark Age Ahead, in which she deals specifically in a short, 13-page chapter with the issue of the learned professions, of which the clergy were the first. Some of you may not know, but in England, probates were not done by barristers or solicitors; they were done by the clergy, and all medical services at that time were free. Very simply, she anticipates, in the book entitled Dark Age Ahead, her last book, which came out in 2005—in May, I believe—that the lack of capacities of the learned professions are issues leading to the decline of our civilization.

I've got to get on with it, because those minutes go by so very quickly.

As to the fraud, which was my initial interest in health care, because there are provisions in the Health Insurance Act where any person can get one's own billings—I had vibes about the particular physician involved; I checked him out and found out the false billings. I did not go to the ministry; my connections were primarily with crown authorities. I went to the fraud squad. They said they couldn't handle it; it was too small a matter to prosecute a doctor for what amounted to a \$1,250 fraud with regard to me. This doctor was billing OHIP excessively. He was billing when he wasn't there; he was billing when the patient wasn't there—all in breach.

The College of Physicians and Surgeons, to whom I provided my first complaint to the college on the matter of the fraudulent billing, which is covered by 856, the regulation under the Medicine Act, disposed of it, took no further action. "Billing disputes are not within the jurisdiction of the complaints committee." Whose jurisdiction are they within? I went to the health pro board,

and I will deal with them on a very important matter in a moment. The health pro board upheld the dismissal of the claim. Dr. Gerace mentioned to you going to the health pro board, and this is very important, because he made representations—and I'm just going to digress for a minute—with regard to the interplay between the College of Physicians and Surgeons, and in my submission to you, in terms of who I was, I said I will restrict my comments primarily to the College of Physicians and Surgeons, which I believe is the reason for the proposed legislation.

I am not opposing that legislation and I'm not yet qualified to make a proper submission as to the proposal, but I do suggest, with respect, that it is most important. It recognizes the fact that the College of Physicians and Surgeons is not carrying out its statutory duty. I refer you to subsection 3(1) of the Regulated Health Professions Act's procedural code, which sets out the objects: to govern and regulate the profession according to the statutes, regulations and bylaws. I submit, with respect, that the College of Physicians and Surgeons has not done that. When you go down to subsection 3(2)—in carrying out its objects, the college shall serve and protect the public interest.

In my respectful submission, in the past 10 years, the College of Physicians and Surgeons has not carried out those objects in two important respects. One is with regard to the issue of enforcing the advertising regulation, which I'll deal with briefly. The second one, most importantly, which is the issue that Dr. Koka raised, was the one situation, obviously, of Dr. Yazdanfar and the tragic Stryland situation. That deals with Medicine Act regulation 865, subsection 2(5), which reads that "the holder of a certificate of registration shall only practise in those areas of medicine in which the holder is prepared by education and experience."

If I may deal with advertising—and I'd like to deal with one issue on fraud. I monitored every single OHIP fraud case that came down the pike, despite the zero tolerance in respect to health care fraud. Very quickly: a doctor, a psychiatrist, was over-billing OHIP. An OPP senior officer involved in that investigation informed me as an aside—and I will advise who it was when I appear on this matter before the Divisional Court, before whom I have appeared on other related matters—that the true amount of his fraud was \$300,000.

I brought an application under the college's own rule 1203 to get production of documents in that matter. I was denied each and every single one—the notice of hearing, which is now publicly handed out, any documents filed; absolutely nothing. The college said that they had no legal obligation to provide me with any information. We are now getting notices of hearing on request. That flows from a Divisional Court decision in the matter of the Star versus Toronto city police.

I realize I'm running out of time.

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The College of Physicians and Surgeons talks constantly about openness, transparency and the rationale for

our decisions. I'll give you one simple example. I have been monitoring the College of Physicians and Surgeons for almost 15 years. I have material from each and every one of their council meetings over that period of time, going back to February of 1996. Very simply, on one occasion, a Dr. Hurst, a single, young doctor from Schreiber, Ontario, was charged with sexual abuse. Prosecutorial discretion: I appreciate the term and what it means. It applies to criminal prosecutions and it applies to discipline prosecutions. In that hearing, when you talk about openness, transparency and rationale for our decisions—when the report of that decision and any other was presented to council, a public member stood up and asked, "Why was this"—

The Chair (Mr. Shafiq Qaadri): One minute remaining, Mr. Siegel.

Mr. Marvin Siegel: "Why was this penalty so slight?" Dr. John Bonn, then the registrar of the college, advised, "Due to legal advice, I cannot say more." This is a member of council, a public member of council. Dr. Bonn said, "Due to legal advice, we can say no more."

The only other thing I want to say is this: I support totally the matter of the new bill. It would take too long to make submissions as to various ingredients of it. Very simply, in my brief documents that I put before you, I would ask you to consider two documents—and I'll be very quick. One is the three-page letter, dated September 23, 2009, from the Health Professions Appeal and Review Board, in which they do not give me proper—

The Chair (Mr. Shafiq Qaadri): With respect, Mr. Siegel, the time has now expired. I'd like to thank you on behalf of the committee for appearing today. I believe we did receive a written submission from you as well, did we not?

Mr. Marvin Siegel: You did not, sir. I presented documents which would be supporting some of my submissions. May I ask you this, sir?

The Chair (Mr. Shafiq Qaadri): That's what I'm referring to.

Mr. Marvin Siegel: May I ask you—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Siegel.

FEDERATION OF HEALTH REGULATORY COLLEGES OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I now call our next presenters to please come forward: Ms. Coghlan, the president of the Federation of Health Regulatory Colleges of Ontario, and colleagues—

Ms. Anne Coghlan: Thank you very much.

The Chair (Mr. Shafiq Qaadri): First of all, as you've seen, the protocol is 10 minutes. Please do introduce yourselves individually. Go ahead.

Ms. Anne Coghlan: Thank you very much, and good afternoon. My name is Anne Coghlan, and I am president of the Federation of Health Regulatory Colleges of Ontario. With me today is Jan Robinson, our vice-president.

The federation is an umbrella organization for 22 health regulatory colleges, which govern health professions under the authority of the Regulated Health Professions Act. There are almost a quarter of a million regulated health professionals in Ontario.

The federation facilitates inter-professional collaboration, educational activities, common frameworks and implementation of strategic directions. It also serves as a vehicle for collective consultation with the ministry.

While the federation's submission on Bill 179 focuses on amendments to the RHPA and not on profession-specific issues, the federation supports, in principle, legislative changes that facilitate inter-professional collaboration.

The federation has a history of collaborative work with the ministry and with the Health Professions Regulatory Advisory Council to facilitate effective regulation of health professionals in the public interest. It therefore came as a complete surprise that there was no consultation with the federation in relation to provisions which appear in Bill 179, giving the minister powers to appoint a managerial supervisor and to mandate operational audits. The federation and the minister have developed an effective collaborative relationship over the years, which the proposals seem to disregard.

I wish to emphasize that we want to work with the government to make better use of the current section 5 of the RHPA, which we believe gives the minister the necessary powers to ensure that colleges are acting in accordance with the legislation. The federation recognizes that health colleges must be accountable to the Minister of Health and Long-Term Care and to the public. Accountability is a major theme of the RHPA and a focal point for our federation.

That accountability already includes, which you've heard earlier this afternoon, mandatory reporting; complying with minister's directives; the appointment of public members who serve on our councils and committees' providing the public with information about our members; a strict regulation and bylaw approval process; ensuring meetings are open to the public; appeals processes through a special tribunal and the courts for adjudicative decisions; and scrutiny by HPRAC, which acts as directed by the minister.

To further enhance accountability, the RHPA has been amended a number of times. Recent additions require colleges to file reports of registration practices with the Fairness Commissioner, expand information available to the public about our members, and add information on college websites. Recent legislation also increased the power of the minister to receive information from colleges. In addition, changes to the Ontario Human Rights Code and the Personal Health Information Protection Act have led to increased scrutiny of college actions by other external agencies.

Despite the fact that regulatory colleges are held to a high degree of accountability, the federation and its members go beyond the requirements enshrined in legislation. One example is the formation of our task force on accountability, agreed to well before the introduction of Bill 179. The task force on accountability is exploring common mechanisms for an accountability framework. We have included the ministry as a key stakeholder in this important undertaking.

All existing accountability measures and legislative powers aside, Bill 179 has introduced new provisions that we believe are counter to the collaborative and transparent approach that the government professes. As written, Bill 179 adds provisions enabling the minister to appoint a supervisor to take over the administrative management of a college; the minister may also direct an operational audit. As I indicated at the outset, these provisions were introduced without any consultation with the federation and were not recommended by HPRAC.

Further to that, the federation has not been provided with any explanation as to why this additional power is needed or any example of where the existing powers of the minister are inadequate. Currently, section 5 of the RHPA gives the minister sweeping powers, including the right to require a council of a college to do anything that, in the minister's opinion, is necessary or advisable to carry out the intent of the legislation. The federation concludes that the need for new provisions is unclear and unnecessary.

Rather than relating to the appropriate level of accountability, the proposed provisions appear to relate to the operations and management of colleges. This runs contrary to the minister's role of oversight to ensure good governance of colleges. If there is a problem, the current provisions in section 5 give the minister the power to ensure that appropriate governance is restored.

Regulatory colleges differ from hospitals and school boards. Colleges are funded by members. The supervisor model that now exists for publicly funded organizations is a poor fit in the regulatory college model.

Bill 179 also lacks clarity. For example, there are no criteria identifying when appointing a supervisor might be appropriate. There is no requirement that the minister first make a finding that the college is failing to fulfill its essential public interest objects. In addition, procedural safeguards in the provisions are inadequate. There is no requirement to use section 5 of the RHPA first and to only use supervisor or managerial audit powers if that intervention fails. There is no due process. There is no maximum term for the intervention and no appeal or review mechanism.

Further, the powers of the supervisor and auditor do not have the expected constraints. There is no protection to prevent confidential or privileged information being disclosed. There is also no discussion of financial accountability, including who pays for the supervisor's or auditor's work, how reasonable remuneration would be managed and how to preserve the college's assets from being appropriated by the supervisor.

If it is felt that section 5 of the RHPA needs to be more explicit, the addition of specifying that the minister may direct the attendance by college representatives at a meeting called by the minister to discuss concerns or an alternate dispute resolution mechanism could be considered. If additional enforcement mechanisms are needed for non-compliance by a college, this can also be addressed through amendments to section 5. Adding a mandatory injunction provision to require a college to comply with a minister's directive or a power to appoint, with suitable safeguards, a supervisor to implement a minister's direction under section 5, if a college failed to comply with that direction, could also be considered.

The federation supports strong public accountability by regulatory health colleges. Extensive accountability, in fact, already exists. We recommend that the supervisor and audit provisions be removed. They do not achieve greater accountability beyond what is already available in the current statute.

We reiterate that we would be pleased to work together with the minister and HPRAC to review the issue of accountability and to develop appropriate and effective solutions to any concerns that might exist. While there is always room for improvement, in the absence of specific areas of concern, the proposed changes imply a lack of confidence in colleges' accountability. The federation would welcome frank dialogue with the government and an opportunity to collaborate on solutions that meet our joint commitment to effective regulation in the public interest.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Coghlan. Thirty seconds; to the government, Mr. Balkissoon.

Mr. Bas Balkissoon: I just wondered if you listened to the alternative suggested by the CPSO. Would you agree to that alternative?

Ms. Anne Coghlan: The federation's submission is very similar and does support the recommendation of CPSO.

Mr. Bas Balkissoon: Is the college of optometrists a member of your federation?

Ms. Anne Coghlan: The federation is made up of all of the current health—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Balkissoon. Ms. Elliott.

Mrs. Christine Elliott: Thank you very much for your presentation—very clear and very reasonable.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Elliott. Madame Gélinas.

M^{me} France Gélinas: You presented very valid arguments as to why there shouldn't be that provision for a supervisor. Do you know where this idea came from?

Ms. Anne Coghlan: No. We have not been given any indication of what the source of the recommendation is.

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Gélinas, and thanks to you, Ms. Coghlan and your colleague, for your deputation on behalf of the Federation of Health Regulatory Colleges of Ontario.

ONTARIO CHIROPRACTIC ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenters to please come forward: Dr.

Brunarski, president, and Dr. Haig, executive director of the Ontario Chiropractic Association. Welcome, gentlemen. Please introduce yourselves individually and begin.

Dr. David Brunarski: Good afternoon. My name is Dr. Dave Brunarski, and I am the president of the Ontario Chiropractic Association. Joining me today is OCA executive director Dr. Bob Haig. We would like to thank you for this opportunity to present our views on Bill 179. We will take just a few minutes to allow time for questions.

The OCA is the voluntary professional organization that has represented the chiropractic profession since 1929. Just over 80% of Ontario chiropractors are OCA members.

Dr. Haig?

Dr. Bob Haig: Good afternoon. The Ontario Chiropractic Association is highly supportive of the government's resolve to remove barriers that limit practitioners' ability to practise to the extent of their education, training and competence and to effectively participate on interprofessional collaborative teams. It is for these two important reasons that we're here today.

In Ontario, the chiropractic profession is supported by three bodies: the Ontario Chiropractic Association, the College of Chiropractors of Ontario and the Canadian Memorial Chiropractic College, which is the educational institution. Obviously, while each has their own mandate and responsibilities, you will hear today from each organization why we are united in recommending the same single, straightforward amendment to Bill 179.

The musculoskeletal conditions that chiropractors manage are among the most costly and burdensome both to society and to the health care system. In Ontario, the estimated direct and indirect cost of back pain alone is \$2.4 billion a year. Chiropractors provide diagnosis and treatments to more than a million patients with these conditions every year.

The recent HPRAC recommendations, Bill 179—which is under consideration here—and the regulation-making process to follow are all intended to enhance scopes of practice where that's necessary and to provide the tools for practitioners to practise fully within their scope. In the current form, Bill 179 makes recommendations for a number of professions but not with respect to chiropractic.

We are not seeking an expanded scope of practice. Rather, we are seeking the diagnostic tools to improve our ability to practise within the existing scope. Specifically, those tools are magnetic resonance imaging and diagnostic ultrasound—and it's the ability to order those, not to actually perform them.

Let me give you an example of how things work currently. A patient consults a chiropractor for back pain. It's one of those few cases where, to arrive at an accurate diagnosis and ensure that the correct treatment approach is applied, the patient requires an MRI. Currently, the chiropractor refers that patient to a family physician or a medical specialist, the physician orders the test, the test is performed, the results go back to the physician, the

patient goes back to the physician and then finally the results are conveyed to the chiropractor. Given that the chiropractor is fully trained and competent, this convoluted route is unnecessary and inefficient, and contributes to increased wait times, the burden on physicians and the added cost on the system. So it's important to recognize that chiropractors already "order" these tests. It happens in Ontario every day, but they're ordered through a physician. The OCA is simply asking that chiropractors be permitted to directly order these tests.

Attached to our brief you will find a number of letters from front-line family physicians and other health care professionals who work with chiropractors in multi-disciplinary settings and who support this amendment. For example, a Hamilton physician who is part of the Hamilton family health team has written directly to you to say, "Chiropractors will be able to care for patients in a more appropriate manner, thereby avoiding time-consuming and costly referrals to other disciplines. This will serve to alleviate an inconvenience to the patient and

expedite recovery."

In the past few weeks we've met with most of you and many of your colleagues. The reaction we have received is that this request is logical, it's simple and simply makes sense. If this is not implemented, it will be years before there's another opportunity to do so. Implementing it now will avoid years of inefficiency, unnecessary costs, compromised patient care and barriers to interprofessional collaboration. Implementing it now will enable chiropractors to better lend their training and expertise to delivering health care in a variety of collaborative and integrative health care settings. Specifically, and consistent with provisions already in Bill 179 for some other professions, we ask the committee to amend Bill 179 to amend section 4 of the Chiropractic Act in order to include the authorized act of ordering the application of a prescribed form of energy. The proposed legislative amendment is documented in detail on page 7 of our brief, which you have in front of you. This amendment will provide for the development of regulations to permit chiropractors to order MRIs and diagnostic ultrasounds.

Chiropractors are deeply committed to the health of Ontarians and to the Ontario health care system. We hope to work with you, as we are working with other health care professions, to create a better, stronger and healthier Ontario. Again, thank you for the opportunity to present our views, and we'll be happy to answer any questions.

The Chair (Mr. Shafiq Qaadri): We have about two minutes per side, beginning with the PCs. Ms. Elliott.

Mrs. Christine Elliott: Thank you very much for your presentation. It is very clear; I just want to confirm, though, that there is only the one amendment that you're suggesting, specifically the one that's on page 8 of your presentation. Is that correct?

Dr. Bob Haig: That's correct. It's on page 7. The Chiropractic Act is being opened. There's a change with respect to the appointment of public members. We're suggesting this other one-line addition to that amendment.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas?

M^{me} France Gélinas: There have been a number of presentations—I lost track, actually—but some of them saw limiting the number of providers who could order MRIs as a way to limit the use of expensive technology and basically lobby against anybody gaining access to requesting MRIs. What would you answer to that?

Dr. Bob Haig: The largest research study that's been done that would address this is in a patient population of 1.7 million in a very large HMO. For those patients who had access to chiropractic services, the cost for musculoskeletal treatment was substantially lower. One of the reasons was because of reduced use of advanced expensive imaging. This is what chiropractors do. They're very diligent in their use of it. So if anything, we could anticipate a reduction.

The Chair (Mr. Shafiq Qaadri): To the government side. Mr. Balkissoon.

Mr. Bas Balkissoon: I want to thank you for being here and presenting to us. I think your presentation is very clear and well understood.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Dr. Haig and Mr. Brunarski, for your deputation on behalf of the Ontario Chiropractic Association.

Just before I call our next presenter I would once again, on behalf of the committee, like to recognize the presence of Ms. Barbara Sullivan, former member of provincial Parliament, in the government of Ontario. Welcome.

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DIETITIANS OF CANADA

The Chair (Mr. Shafiq Qaadri): I'd now invite Ms. Leslie Whittington-Carter of the Dietitians of Canada to please come forward. Welcome, and please begin.

Ms. Leslie Whittington-Carter: Good afternoon. I'm Leslie Whittington-Carter and I'm the Ontario government relations coordinator for Dietitians of Canada. Thank you for the opportunity to speak with you today about Bill 179.

Dietitians of Canada is the professional association representing registered dietitians in Ontario. We have over 6,000 members nationally, and about 3,000 of our members are here in Ontario. Dietitians of Canada is committed to excellence in patient care, and we support regulatory mechanisms that ensure public safety. We're also a strong supporter of inter-professional care, and we're in favour of initiatives that enhance the ability of health care professionals to work together in the best interests of the patient.

We're pleased to provide comment today on this bill, which represents a significant impact on the practice of health care professionals in the province. We have five main recommendations for the committee, which are found on the first page of our submission, just after the cover page. The first is that we ask the committee to support the amendment that has been written into Bill 179 to the Dietetics Act, which will allow dietitians to

take blood samples by skin pricking. The ability to perform this simple aspect of the controlled act will make it much easier for dietitians to effectively provide care for their patients, particularly patients suffering from diabetes, by testing blood-glucose levels, so we ask for your support to leave that as it is.

The second recommendation is actually for an addition to the bill regarding the scope-of-practice statement for dietetics. The scope-of-practice statement currently set out in the Dietetics Act does not clearly reflect the activities of our profession. A request was made to HPRAC in our original scope-of-practice review application, which was a joint application by Dietitians of Canada and the College of Dietitians of Ontario, and that was not put forth as a recommendation to the minister in HPRAC's Critical Links report. The main reason given was that the changes we requested did not directly affect the practice of controlled acts for our profession. However, we feel that that does not fully recognize the purpose of a scope-of-practice statement and that, in particular, the inclusion of the health promotion aspect of our practice is very important and is also found in a number of other regulated health professions' scope-ofpractice statements, as outlined on the submission.

Our proposed scope-of-practice statement was crafted with the input of our members, as well as the regulatory body and other stakeholders. We've given the revision that we would recommend on page 2, along with a detailed rationale on pages 2 and 3 for our changes.

The third request that we would make of this committee is actually for a regulatory amendment. While we realize that you do not deal directly with changes to the regulations, we feel that this is directly related to Bill 179 and that it's of sufficient importance to the health care system that the members of this committee need to be made aware of it. Currently, registered dietitians cannot directly order nutrition therapy within a hospital due to the provisions of the Public Hospitals Act, which specify which professions can order diagnostics or treatments within a public hospital. That means that the experts in foods and nutrition—the registered dietitians—can only recommend a diet order or a nutritional therapy, but the actual order has to be written either by the physician or co-signed by the physician or the nurse practitioner. The delays that result from this are very detrimental to patient care and a very poor use of health practitioners' time. We feel that, with the current shortage of all health professions, it's very important that regulatory requirements support the provision of safe, effective and efficient care. You'll find a full description of this issue within our submission, and we ask that you consider forwarding this request to the minister to amend the regulation under the Public Hospitals Act to allow dietitians to directly order nutritional therapy within public hospitals.

Our final two recommendations to the committee are also found in submissions of other professional associations belonging to CORHPA, the Coalition of Regulated Health Professional Associations. The first is that the provisions within Bill 179 concerning the appointment of

a college supervisor be removed or substantially amended. As you've heard from other presentations yesterday and today, we feel that the minister has adequate powers under the current RHPA to compel a college to act, and that the ramifications of a supervisor's appointment would have very negative effects on the regulatory body and hence on the professionals that are its members, who support the regulatory body through their registration fees.

Finally, concerning the professional liability insurance reference in Bill 179, although we've been verbally assured by ministry staff that the intent is not to have regulatory bodies actually provide professional liability insurance or professional practice insurance, it is important that the wording in section 24 be changed to ensure that that is clearly laid out.

Thank you very much for the opportunity to present our recommendations to you. I'd be happy to answer any questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Whittington-Carter. We have about a minute or so per side, beginning with M^{me} Gélinas.

M^{me} France Gélinas: I would say, very well done. There are five; I understand them all, and I found them all in the bill. That's a miracle right there.

The one that is a little bit tricky is the one that has to do with the Public Hospitals Act. You suggest that we include this in Bill 179?

Ms. Leslie Whittington-Carter: My understanding is that because it is a regulatory amendment, we are just asking for your support to the minister's office and to the relevant ministry staff to update the regulations.

Mme France Gélinas: Okay.

The Chair (Mr. Shafiq Qaadri): To the government side. Ms. Mitchell.

Mrs. Carol Mitchell: Thank you very much for your presentation. Just to add further, you know that this bill is about further allowing collaboration and expanding our health services. How do you see that the amendment you're asking for in the hospitals act would enhance your role? And specifically, could you give me an example directly related to diabetes?

Ms. Leslie Whittington-Carter: The amendment that we're asking for under the Public Hospitals Act we feel would enhance collaboration by allowing the time that's currently spent, or I'll say wasted, in chasing a physician's co-signature on a diet order to be spent in meaningful patient care collaboration, actual discussion between health professionals on complex patient care cases.

Mrs. Carol Mitchell: So specifically, if a diabetic strategy was developed for a patient, do you have the authority to initiate a nutritional plan with that client?

Ms. Leslie Whittington-Carter: At this point, no. We would make the recommendations, for example, for the number of calories or carbohydrates or the diet order or plan. At this point, our order would then need to be cosigned by the physician or nurse practitioner.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Mitchell.

Mrs. Christine Elliott: I just have a quick follow-up question on the same subject. As things stand now, are you the one who actually writes it and it's the physicians who just sign off on it? Is that how it works?

Ms. Leslie Whittington-Carter: It depends on facility policy. That certainly happens in some instances. The dietitian will actually write the order and the physician will just sign it. In other facilities, they won't allow the actual writing of the order, so then you have to ask the nurse to get the physician to actually write the order.

Mrs. Christine Elliott: But the input is essentially always from the dietitian?

Ms. Leslie Whittington-Carter: Yes, definitely. And according to surveys of our members, almost 100% of their recommendations for nutrition therapy are straightaway signed off by the physician. So it's not affecting patient care except to delay it.

Mrs. Christine Elliott: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Whittington-Carter, for your deputation on behalf of the Dietitians of Canada.

CANADIAN MEMORIAL CHIROPRACTIC COLLEGE

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter, Dr. Moss, president of Canadian Memorial Chiropractic College, and colleagues. I invite you to begin now, please.

Dr. Jean Moss: Good afternoon, Mr. Chairman and members of the committee. We thank you for the opportunity to speak to you today with regard to Bill 179. I am Dr. Jean Moss, president of the Canadian Memorial Chiropractic College, commonly referred to as CMCC. With me today are two of my colleagues: Dr. Silvano Mior, special assistant to the president, and Dr. Deborah Kopansky-Giles, coordinator, integrated care research.

Established in 1945, CMCC is the only English-speaking chiropractic educational institution in Canada. Students enter CMCC after a minimum of three years of university-level education. They then complete four years of intensive study, leading to the doctor of chiropractic degree, offered under the written consent of the Ontario Ministry of Training, Colleges and Universities.

In addition, CMCC is accredited by the Canadian Federation of Chiropractic Regulatory and Educational Accrediting Boards and is recognized by regulatory bodies in each province and territory.

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We support the government's initiatives to promote and facilitate inter-professional education and collaboration among health care professionals for the benefit of all Ontarians. In order to achieve this, CMCC, together with the College of Chiropractors of Ontario and the Ontario Chiropractic Association, requests that the committee consider a minor amendment to the current Chiropractic Act to allow chiropractors to order diagnostic

tests such as MRI and diagnostic ultrasound. This would be consistent with the intent of Bill 179.

As you may be aware, the Health Professions Regulatory Advisory Council noted that enabling health care providers to perform tasks consistent with their competence will not only enhance their working with others but will potentially allow them to take on new or altered roles in collaborative environments. Interprofessional education plays a critical role in achieving this goal.

CMCC is recognized internationally for advancing interprofessional education by introducing ground-breaking clinical experiences for its students within multidisciplinary settings. We educate our interns and graduate students to participate as members of multidisciplinary health care teams within partner health care institutions; for example, Anishnawbe Health Toronto, South Riverdale Community Health Centre, Sherbourne Health Centre, St. John's Rehabilitation Hospital, and St. Michael's Hospital. CMCC has also been involved in the delivery of several award-winning interprofessional educational programs in collaboration with St. Michael's Hospital and the University of Toronto.

Our faculty has conducted research assessing the role of chiropractic in inter-professional care consistent with the government's vision of team-based community primary care. This research, our experience and that of our collaborators suggest that collaborative care can benefit patients, improve efficiencies in the delivery of care to patients with musculoskeletal conditions, reduce repeat visits to physicians and provide timely patient access to much-needed care.

Chiropractors are well educated in determining when to order and in interpreting imaging tests appropriate to their scope of practice. The principles of diagnostic imaging at CMCC are integrated throughout the majority of the courses in the doctor of chiropractic degree program. Courses range from radiation physics to specific pathologies to advanced imaging technologies, such as MRI and diagnostic ultrasound. Students use these skills in diagnostic imaging in the development of differential diagnosis to advance the clinical decision-making skills essential to success in clinical practice.

The CMCC curriculum, based on core clinical competencies, national clinical guidelines and standardized learning outcomes, provides CMCC graduates with the ability to judiciously order and interpret relevant clinical diagnostic tests in order to accurately communicate a diagnosis to patients.

It is important that all health care professionals be enabled to practise to their level of training and education in order to achieve effectiveness in inter-professional collaborative care. Being able to directly order advanced diagnostic tests would enhance the ability of chiropractors to make efficient and effective clinical decisions, reduce potential duplication of already-limited services and assure safe and quality patient-centred care for all Ontarians.

A minor regulatory amendment, as noted above, would enhance chiropractors' ability to provide health

care within their full scope of practice as members of an integrative, collaborative team contributing to a stronger and healthier Ontario.

We appreciate the opportunity to present to this committee today. We are happy to respond to any questions from the committee.

The Chair (Mr. Shafiq Qaadri): Thank you very much, Dr. Moss, for your presentation. We have about 90 seconds per side, and we'll lead off with the government. Mr. Balkissoon.

Mr. Bas Balkissoon: Thank you, Mr. Chair. Are your graduates currently trained in MRI and ultrasound?

Dr. Jean Moss: Yes, they're currently trained in ordering and interpreting.

Mr. Bas Balkissoon: Thank you very much. The Chair (Mr. Shafiq Qaadri): Ms. Elliott.

Mrs. Christine Elliott: Thank you very much for your presentation. I don't have any questions; it was very clear.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas.

M^{me} France Gélinas: How does the training in MRI that your students get compare to the training of a physician?

Dr. Jean Moss: I couldn't answer that question for you, but for the majority, the average family physician doesn't have much training in the interpretation of MRIs; that's usually done for them by radiologists. But I haven't got those facts with me.

Mme France Gélinas: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Dr. Moss, and your colleagues Dr. Kopansky-Giles and Dr. Mior, for your presentation on behalf of the Canadian Memorial Chiropractic College, commonly known as the CMCC, as you rightly said.

ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I now invite President Fefergrad of the Royal College of Dental Surgeons of Ontario to please come forward. Welcome, and please begin.

Mr. Irwin Fefergrad: You've elevated me in the position I hold; I'm the registrar at the college. I aspire to be president one day, but I don't think that's going to happen soon. Thank you for inviting me and for accepting my invitation to be here. I know it has been a long afternoon for you.

I should tell you, by way of background, that I'm not a dentist; I'm a lawyer. I'm the only lawyer in the province of Ontario who has a double specialty in health law and in civil litigation. I tell you that so that what I share with you might perhaps have a little more weight than otherwise.

You've heard from many of my colleagues, and will continue to hear, about the concerns around the drafting and the provisions of Bill 179, and of course you've got a joint letter we submitted on September 25. I don't propose to repeat what you've already heard. I want to

chat with you a bit about the message you give when there is a bill of this sort that has awesome authority and power in the hands of a minister to insert a supervisor. What is the message that a council gets? By the way, as you know, government appoints 49% of most of the councils, and certainly mine. What is the message that this council receives?

Let me tell you a little bit, in context, about what we have been doing in the last year to support government initiatives and government activities. There has been, from the Royal College of Dental Surgeons of Ontario, full, total and unqualified support of the initiatives around the amendments to the RHPA—at no small expense, by the way, to the dentists of Ontario; and full, complete and total support of the initiative of this government—and indeed, every government in the country, the federal government included—on the agreement on internal trade, such that in order to have permit-to-permit registration, we have negotiated a national agreement that includes every regulator in dentistry from Newfoundland to British Columbia and every university that teaches dentistry, and that was at no small expense.

When the government passed the fairness legislation, we not only supported it; we asked to be the first one to be audited. As you will remember, the audit provisions under the FARPA legislation have the cost borne by the colleges and by the individual members. I'm delighted to report to you that we were audited and came up with a sterling report, complying with all the provisions of fairness. There's comment in the report about the efforts dentistry is making to reduce barriers to internationally trained dentists.

We've been fully supportive of the ministry around human resource database initiatives, also at no small expense. Around pandemic, we've not only been supportive; we've lent some of our staff resources to assist different committees of the government to try to help out in any way we can, and that's just in the last year or so.

So, in the face of a piece of legislation that says the minister has this awesome authority, almost without really outlining the rationale, and frankly, there isn't a clear indication in the legislation what would be the trigger—that is not a message that I think is healthy to give to regulators that are compliant and that want to regulate with one purpose; that is, in the public interest.

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I would urge you to ask yourselves, if you were sitting on the council of any college—but particularly my own, where these activities have taken place—how would you feel if you were faced with Bill 179, which says that the minister shall, at his or her discretion, impose a supervisor? I don't think you'd feel particularly good about what you've done, and you might ask yourself, "What more do I need to do? What else do I have to do to prove myself, to establish that we can regulate in the public interest and protect public safety?"

As you look at this bill, I would ask that you consider the existing section 5 authority, and if more is needed, I would urge you not to trash out section 5 but have it as a precedent so that at least there are some trigger points, at least there is some notice so colleges can understand what the ministry or the minister may be concerned about. Give the colleges an opportunity to rectify it, so that the good faith that has been shown can continue to be demonstrated. Absent that, the message that goes out is not a healthy one and not an encouraging one, especially to the many people you yourselves appoint to sit on these councils.

One last point, and then I'll stop, is the power to request an audit. As you know, we are obligated to provide audited statements, which we do; you've heard that before. I don't know how one answers the question to a profession that doesn't look to government for one nickel—not one nickel—in its operations. So they wonder why a minister would want the authority that is contemplated in this statute.

Those are my submissions. I know that you have a difficult time; it's a difficult statute, and there are many features to it. I thank you for your time, and I'm happy to receive any questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fefergrad. We'll start with the PC side for a minute or so. Ms. Elliott.

Mrs. Christine Elliott: Thank you very much, Mr. Fefergrad. I think you have been listening to some of the other presentations, and you know that a number of other groups have similar concerns to those you have expressed.

I think it's troubling on several levels. First, a number of groups have indicated that these provisions are being brought forward without any meaningful consultation; and secondly, the lack of limits on the circumstances under which this power can be exercised. Thank you for bringing that forward in such a cogent fashion, and we certainly are listening and considering very closely.

Mr. Irwin Fefergrad: In the interest of answering your question, may I say that this is a college that actually welcomes accountability. You'll note—I'm not going to read the whole report I brought, but Barbara Sullivan chairs HPRAC, a wonderful organization. There are some quotes there from our college, which actually endorses and asks for accountability, but in a meaningful and fair way.

Mrs. Christine Elliott: Thank you very much. The Chair (Mr. Shafiq Qaadri): Madame Gélinas.

M^{me} France Gélinas: I certainly agree with the comments that my colleague just made, and you are not the first representative to talk about the provision of a supervisor. Do you have any idea where it came from and what it's trying to do?

Mr. Irwin Fefergrad: I don't. In fact, I asked that question at briefings, and I'm no clearer as to where it comes from. My assumption is that it comes from a very good place: government trying to do the best it can to address a problem. I'm not sure what the problem is, but I know the solution can't be appropriate to whatever the problem is. The self-regulation we have in this province is envied across the world. This kind of provision is not a healthy message to give.

Mme France Gélinas: Thank you.

The Chair (Mr. Shafiq Qaadri): To the government side: Mr. Balkissoon.

Mr. Bas Balkissoon: Thank you, Mr. Chair, and thank you very much for your input. The College of Physicians and Surgeons of Ontario made a submission for an alternative to the wording in the bill with regard to the supervisor. Have you had a chance to read it, and do you support it?

Mr. Irwin Fefergrad: We, I think, jointly wrote a letter on September 25: ourselves, the college of nurses, the college of pharmacists and CPSO. I haven't changed my mind since September 25.

Mr. Bas Balkissoon: Okay, thanks.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fefergrad, for your presentation on behalf of the Royal College of Dental Surgeons of Ontario.

COLLEGE OF NURSES OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I'd now like to invite Mr. Fieber, president, and—welcome back—Ms. Coghlan, CEO of the College of Nurses of Ontario. Welcome, and please begin.

Mr. Georges Fieber: Hello. My name is George Fieber; I'm a registered nurse. I'm the director of professional practice at Thunder Bay Regional Health Sciences Centre, and I'm president of the College of Nurses of Ontario. With me today is Anne Coghlan, executive director of the college of nurses.

I'm pleased to be speaking to you today on behalf of the College of Nurses of Ontario, the regulatory body for the nursing profession in Ontario. Many of the changes related to the nursing practice proposed in Bill 179 were recommended by the college back in 2006. We recommended the changes to improve public access to quality health services and to improve transparency regarding who's accountable for what in Ontario's health system. We're pleased to see that many of our recommendations were adopted in Bill 179.

The College of Nurses of Ontario has provided a written submission to the standing committee, which discusses five areas of concern with the bill. My comments today will elaborate on one issue, and that is nurse practitioner prescribing.

There are about 1,400 nurse practitioners, also known as NPs, registered in Ontario. They work in every corner of the province: large urban cities, rural communities and remote areas. They work collaboratively with the other health professions and they also work independently; it is possible to do both. They provide health services to people of all ages from all walks of life, with all sorts of health care needs: from those who are healthy and well to those who are terminally ill, and everyone in between. This means people with diabetes, cancer, heart disease and dementia, to name a few, and of course it includes people who are living with more than one chronic disease. Nurse practitioners work in every imaginable setting: emergency rooms, intensive care units, long-

term-care homes, public health units, hospital wards and community health centres, to name a few. They work in a number of different clinical specialties, including oncology, cardiology, mental health, sexual health—you name it. Again, this list could go on. I could probably find you an NP who works with just about any patient population you could think of.

This diversity in NP practice is the reason why the College of Nurses of Ontario does not support a list of drugs for nurse practitioner prescribing and why we believe the drug list is not in the public interest. We would like Bill 179 amended to enable broad prescriptive

authority for nurse practitioners.

I don't think anyone is challenging that NPs are competent to prescribe drugs. It is part of their education, it's well reflected in their core competencies and it is a common part of their practice. The college sets standards for safe and ethical nurse practitioner practice, including standards for prescribing drugs. Nurse practitioners currently have access to the controlled act of prescribing, because they are competent to prescribe drugs.

Let me expand on what I mean when I say that nurse practitioners are competent to prescribe drugs. Prescribing is not a discrete and isolated event; it's an integrated part of a process of providing health care services to patients. For example, before prescribing a drug, the nurse practitioner conducts a health assessment, a history and a physical examination. The nurse practitioner formulates a differential diagnosis, which is a systematic process of elimination through which the NP analyzes clinical findings and symptoms to narrow down the list of potential diagnoses. The NP takes inventory of all medications the patient is taking to reduce the risk of interactions and potential errors. After writing the prescription, the NP documents it in the patient's health record and monitors the patient's response to the medication.

These are just a few highlights to illustrate to you that prescribing is part of a continuum. You can see how critical that entire process is. Patients are at risk if something goes wrong at any step of the process. Nurse practitioner education covers that entire continuum: health assessment, diagnosis and therapeutics. The college's registration exams, practice standards and quality assurance program also cover that continuum, from assessment to diagnosis to treatment.

So now let me talk about the list and some of the issues.

First and foremost, there is absolutely no connection between a list of drugs and safe prescribing. There are currently close to 300 drugs on the NP drug list. Any one of those drugs can cause harm if prescribed incorrectly. There is nothing magical about the list that prompts a nurse practitioner to select the right drug or choose the right dose to treat the right condition. Rather, it is the nurse practitioner competencies and the college's practice standards in the areas of health assessment, diagnosis and treatment that promote and guide safe prescribing.

Second, given the diversity in nurse practitioner practice and the variety of patient populations, it would

be impossible to predict and list every drug that an NP may be required to prescribe in order to meet patient care needs in a timely fashion. Although there are 300 drugs on the list right now, not all 1,400 nurse practitioners are prescribing all 300 drugs, and there are hundreds of other drugs that are not on the list that some of the 1,400 nurse practitioners need to prescribe.

An NP only prescribes those drugs that she or he is competent to prescribe and that are relevant to the patient population with whom she or he works. This is a standard of practice set by the college of nurses. What this means is that the individual nurse practitioner is familiar with the specific drug and understands the particular patient's condition and symptoms. The NP understands how and why the specific drug is used to treat this patient's condition and also whether there are specific patient factors that may alter the medication's desired effect. This means the NP understands the potential side effects and interactions the drug may cause and whether this particular patient may be at increased risk for such effects. It means promoting optimal therapy for the patient, including education to encourage compliance. Finally, it means the NP understands how to monitor the patient taking the medication to ensure it is having the desired effect and taking the necessary steps to follow up if the treatment is not working.

So knowing this, I ask: What added value is there for the patient in requiring the nurse practitioner to check the list of drugs? A list of drugs is not in the public interest because there will always be an unnecessary delay from when a nurse practitioner may need to prescribe a drug to when the drug is added to the list. The list imposes an artificial barrier between the NP's competency to prescribe a drug and the patient's right to timely access to treatment. I can't tell you how many times this happens with the drug list, and each and every time it does, patient care in Ontario is undermined.

Finally, the college has a 10-year history of using the NP drug list. We'd like to share with you our experience with that list.

The list is rigid. A drug is either on it or it's not. There is no in-between. If the drug is not on the list, then the NP cannot prescribe it. While the list is rigid, patient care needs are not. I'd like to close with a few real-life examples of the negative effect this list has on patient care.

Twinrix is a combination vaccine that offers dual protection for both hepatitis A and hepatitis B. According to the drug list, a nurse practitioner can prescribe the hepatitis A vaccine and/or the hepatitis B vaccine, but not the combined agent because this drug is not on the list. Does this make sense? For Ontarians travelling over the winter season, nurse practitioners cannot prescribe the vaccine of choice.

Another example would be ciprofloxacin HC ear drops. These were used to treat certain types of ear infections. The college of nurses first asked for this drug to be added to the list in 2002. It was finally added in 2004. Then in 2007, the drug was discontinued. It is no

longer available in Canada. Although there are suitable alternatives, NPs cannot prescribe them until they are added to the list.

I already described how NPs provide health services to a wide variety of people. Nurse practitioners work in community outreach programs, providing health services to the homeless, a marginalized and vulnerable population. I can tell you that there's a short window of opportunity to get health care services to people who are homeless. If you miss that window, the complications can be severe.

One of the nurse practitioners in Thunder Bay recently told me that she needed to prescribe Ventolin to such a patient. He wasn't in severe distress, but he needed puffers to keep it that way. The list only allows her to renew the Ventolin—that is, it must first be prescribed by a physician—and then the list permits her to order the repeats.

The patient is homeless. He does not have a physician. Although this NP is perfectly capable of prescribing Ventolin, her best available option that day was to send him to the emergency department to get that first puffer. And by the way, the ER in Thunder Bay saw 125,000 people last year—one of the busiest in the country. That was her critical window of opportunity to provide that patient with the medication he needed.

Not only do we see the drug list interfere with appropriate patient care, it also contributes to the waste of system resources.

My last example will be quick. As I said, the drug list is rigid. A drug is either on it or it's not, and if it's not on the list, an NP cannot prescribe it. Currently, seasonal influenza vaccine is on the NP drug list. However, the pandemic H1N1 vaccine is not.

These are just a few of the multitude of problems faced by nurse practitioners and their patients every day. This is why the college's position is that the list of drugs is more harmful to patient care than helpful.

This concludes my remarks. We have provided more information in the college's written submission. In addition, I'll leave copies of the oral presentation.

The Chair (Mr. Shafiq Qaadri): Fifteen seconds, Madame Gélinas.

M^{me} France Gélinas: Some people say it would be dangerous. Do you agree?

Mr. Georges Fieber: No. Nurse practitioners have the training to prescribe medication safely, and they only prescribe medications to the appropriate patient. A list is not going to change that. If anything—

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon.

Mr. Bas Balkissoon: Thank you very much for being here and presenting to us today.

The Chair (Mr. Shafiq Qaadri): Mrs. Elliott.

Mrs. Christine Elliott: Thank you very much for being here. A very clear presentation.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Fieber and Ms. Coghlan, for your deputation on behalf of the College of Nurses of Ontario.

COLLEGE OF CHIROPRACTORS OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I would now call our final presenters of the day, Mr. Amlinger, president, and Ms. Willson, registrar, of the College of Chiropractors of Ontario. Welcome, and I'd ask you to please begin now.

Ms. Jo-Ann Willson: Good afternoon—almost good evening. My name is Jo-Ann Willson. I am the registrar and general counsel for the College of Chiropractors of Ontario. I am not a chiropractor by training; I am a lawyer and social worker by training. You will be relieved to know we're going to be very brief and we're going to give you an opportunity to ask questions.

CCO is the regulatory body for approximately 39,000 chiropractors in the province. It has a public interest mandate—you've heard that from other regulators. The way in which the public interest mandate is exercised is through complaints and discipline, and quality assurance; those are the two main mechanisms.

Why our CCO submission is different from some of the submissions that you have heard over the past two days: They are different because we are not recommending an expanded scope of practice; we are not recommending a scope-of-practice review. Chiropractors already have a very broad scope of practice: They have the doctor title; they have the responsibility to diagnose; they have the authority to order and interpret x-rays under HARP legislation; they have a very broad scope of practice that benefits patients in Ontario. There is only one amendment that is being recommended and that is on page 10 of our written submission. That amendment takes advantage of the fact that the Chiropractic Act is being opened up, and that amendment is to allow that the authorized acts for chiropractors include ordering the application of a prescribed form of energy. I note for you that it is not interpreting; it is not applying; it is ordering.

I should tell you that CCO specifically chose not to comment on some of the other professions' suggested expanded scope-of-practice requests etc., specifically because our view is that regulators should be trusted to develop standards of practice consistent with the public interest and should be able to know what is within the competency of their members. So we did not comment on those. I should tell you in terms of follow-through that if the amendment was accepted and included in the legislative amendments, CCO would of course work very closely with the ministry in developing appropriate regulations. Also, I will tell you that we would develop standards of practice to which members of the profession would be required to comply.

There is a somewhat analogous situation: When the legislation relating to acupuncture was before committee, the amendment was that members of professions of certain colleges that have standards of practice in acupuncture would be permitted—and that is, in fact, what we did. We developed a standard of practice on acupuncture, and chiropractors now perform acupuncture in accordance with that standard.

There is an opportunity here to make an amendment that is consistent with the policy thrust of the legislation, which supports inter-professional collaboration and also allows members of a profession to act within the full range of their competency and training. I just note parenthetically that CCO was one of the signatories to the federation's submission on the issue of supervisors, and we support that submission. I know there have been some questions about that, so I just wanted to acknowledge that.

The RHPA has been used as a model in many parts of the world, and Ontario has been viewed as a leader in health care regulation.

We just want to thank you for the opportunity to make a few brief comments. I am going to turn it over to Dr. Peter Amlinger to talk about the public-interest rationale for the amendment that we are suggesting.

Dr. Peter Amlinger: Thank you. I'm Dr. Amlinger. I'm a chiropractor with 24 years' experience in Mississauga practising chiropractic and I'm the president of the college, as Jo-Ann noted.

We are here today because we do believe there is a public interest in this amendment to the proposed legislation. Our scope of practice, simply stated, is that chiropractors assess, diagnose and safely care for people with disorders of the spine and nervous system and their impact on health.

As Jo-Ann stated, we are not asking for an expanded or enhanced scope of practice. We're simply asking for access to new technology, to current, up-to-date technology so we can better serve our patients and our scope of practice. Our scope of practice is quite sufficient in caring for the people who present to us and we simply need access to this technology to serve them better.

Basically, it will help, as Jo-Ann said, the policy direction of health care right now. It will improve efficiency, it can decrease costs to the system, and it will enhance patient care and patient safety. It will decrease risk to patients because they won't have to wait so long for tests.

Basically, in my office, there are three types of patients who come to see me—in any chiropractor's office. One type of person comes in and they have a health complaint that is clearly in the domain of chiropractic and I can manage them single-handedly. Some of those patients—a few of them; not very many—would benefit if I could order an MRI to further investigate their problem and help me care for them.

Another group of patients present and they're in a health crisis and they need immediate attention from a physician or another health provider, and we make an immediate referral to either an emergency ward or their attending physician. Those patients need MRI scans, and if we could expedite the process, it would really help them along. There have been instances where patients have been caught in the merry-go-round of going back to their family physician to get the requisition for the MRI or a diagnostic ultrasound and get the result, and they have a tumour and it has cost them their leg and, in some

cases, it has cost them their life. If we could eliminate that, it would be a huge benefit to the public of Ontario.

Then the third type of patient who comes to see us is a type of person with multiple health problems. They are a chiropractic case, but they need to be co-managed by a number of health care providers. Some of those people need MRI scans as well. We could order the MRI scan or the diagnostic ultrasound; we are trained to order the tests, for sure. We could order the tests and then we could enter into a collaborative care agreement with other health providers and serve the patient's needs.

In doing that in jurisdictions where it is available, as Dr. Haig mentioned, it's been shown that chiropractors, because of our training, tend to be more judicious in the ordering of these tests, which means we order them less and save the system money. Other research shows that people get well and they can avoid surgery, and we decrease wait times and we take a burden off the health care system. So we clearly see that it will increase efficiencies and cost savings in the system and, most importantly, it will enhance the quality of chiropractic care and health care in general for the people of Ontario.

I'd like to thank you for giving us your time this afternoon. That concludes my remarks, and I'll open the

floor to any questions.

The Chair (Mr. Shafiq Qaadri): Thank you. Thirty seconds per side. Mr. Balkissoon.

Mr. Bas Balkissoon: Thank you very much for your input.

The Chair (Mr. Shafiq Qaadri): Ms. Elliott?

Mrs. Christine Elliott: Thank you very much for joining us today. A very good presentation.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas?

M^{me} **France Gélinas:** How do you reassure yourself that your members are competent to do this?

Ms. Jo-Ann Willson: We have a number of mechanisms. For example, these would be the quality assurance initiatives, the peer assessment program where we have peers go out and assess members' practices in their own practice. We have the development of standards of practice relating to each of the authorized acts—commuicating a diagnosis, and this one would also require the development of a standard of practice. Those would be the proactive approaches. Of course, there is also the reactive, which is the complaints and discipline.

I don't know if that-

M^{me} France Gélinas: Yes. Ms. Jo-Ann Willson: Okay.

M^{me} France Gélinas: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Willson and Dr. Amlinger.

If there is no further business before the committee, that concludes today's presentations. The committee is adjourned till Monday, October 5, 2 p.m. in this room. Thank you.

The committee adjourned at 1750.



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Monday 5 October 2009

Standing Committee on Social Policy

Regulated Health Professions Statute Law Amendment Act, 2009 Assemblée législative de l'Ontario

Première session, 39^e législature

Journal des débats (Hansard)

Lundi 5 octobre 2009

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Monday 5 October 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Lundi 5 octobre 2009

The committee met at 1415 in committee room 1.

REGULATED HEALTH PROFESSIONS STATUTE LAW AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT DES LOIS EN CE QUI CONCERNE LES PROFESSIONS DE LA SANTÉ RÉGLEMENTÉES

Consideration of Bill 179, An Act to amend various Acts related to regulated health professions and certain other Acts / Projet de loi 179, Loi modifiant diverses lois en ce qui concerne les professions de la santé réglementées et d'autres lois.

Le Président (M. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la politique sociale. Nous commençons avec nos premiers présentateurs.

Ladies and gentlemen and colleagues, I call to order this meeting of the Standing Committee on Social Policy. As you know, we're here to consider Bill 179.

The protocol for all of those who are listening and those who will be testifying today is: All presenters will have exactly 10 minutes to make their presentation, which will be militarily enforced. Any time remaining within those minutes will be distributed evenly among the parties for questions, comments and cross-examination.

ASSOCIATION OF ONTARIO HEALTH CENTRES

The Chair (Mr. Shafiq Qaadri): I now invite our first presenters to please come forward: Mr. Davidson, Ms. McKenna and Ms. Goodine of the Association of Ontario Health Centres. I would respectfully invite you to begin now.

Mr. Bill Davidson: Good afternoon. My name is Bill Davidson. I'm the executive director of the Langs Farm Community Health Centre in Cambridge, Ontario. Today I'm speaking to you on behalf of the Association of Ontario Health Centres, along with my colleague Wendy Goodine, a nurse practitioner from the LAMP Community Health Centre.

We are speaking to you in our role as co-chairs of the Nurse Practitioners' Leadership Group of the Association of Ontario Community Health Centres. Our membership consists of nurse practitioners from a variety of clinical settings, CHC executive director representatives from across the province and AOHC staff.

1420

Thank you for the opportunity to share very briefly with you highlights of our paper regarding Bill 179. Our response, entitled On the Right Path, which we have distributed, outlines the views of the AOHC as a whole and a perspective of our Nurse Practitioners' Leadership Group.

The Association of Ontario Health Centres has a variety of members, including community health centres, aboriginal health access centres and community family health teams. Our members deliver comprehensive primary care and health promotion services that focus on the social determinants of health in over 150 diverse communities throughout Ontario. Members employ interprofessional teams of health providers such as, but not limited to, nurse practitioners, social workers, dietitians, health promoters and physicians, who work collaboratively to provide high-quality, safe and accessible patient care for populations with barriers to access.

You may be aware that northern nursing stations and Ontario CHCs were among the first employers of nurse practitioners, and for more than 30 years have employed a significant majority of nurse practitioners in the province of Ontario.

We commend the government on its initiative to implement an act that expands the scope of practice of regulated health professionals in order to fully optimize the skills of interprofessional health care teams, and we appreciate the significant changes that have been proposed in Bill 179 that address the constraints placed on the scope and practice of nurse practitioners in particular.

We are pleased that Bill 179 enables various professional colleges to implement regulations governing their members with the authority to perform a broad range of acts—such as setting and casting fractures; dispensing, mixing and selling certain drugs; the application of specific forms of energy; and the ability to communicate a diagnosis to a patient—which I know is welcomed by nurse practitioners in Ontario.

We also welcome the proposed amendments that authorize various health care providers to administer, prescribe, mix, sell and dispense drugs and other substances. Proposed acts that broaden the role of other providers,

such as permitting dietitians to check a patient's blood readings and enabling midwives to communicate a diagnosis to a patient, will not only facilitate greater access for our patients in CHCs but will increase the quality and continuity of care for our patients as well.

As employers of a variety of primary care providers, we believe these changes to the legislation will not only result in improved care and better health outcomes for patients but will enable our providers to enhance their effectiveness by fully utilizing their skills and knowledge, thereby creating greater efficiencies in the health care system.

I'll now turn it over to Wendy, who will speak to you about some of the barriers that continue to exist with Bill 179 and provide some concluding remarks.

Ms. Wendy Goodine: The Association of Ontario Health Centres, on behalf of its more than 270 nurse practitioners working in a variety of settings across the province, shares the concerns of the Nurse Practitioners' Association of Ontario that some of Bill 179's provisions continue to place unnecessary limitations on nurse practitioner practice and the evolution of the role in Ontario.

The legislation in its current form appears to contradict HPRAC's and the government's repeated expressions of support for enhanced self-regulation for nurse practitioners and the elimination of unnecessary barriers to effective practice and high-quality patient care. While it takes some good steps in the right direction, it does not go far enough in addressing these barriers and utilizing the full skills and knowledge of all health professionals.

Nurse practitioners practising to their full capacity constitute a logical and effective solution for many of the concerns that face health policy decision-makers, including access to primary health care, improved collaboration and client-centred care. The development of one national standard of nurse practitioner education and practice, and a national standard for NP entry-to-practice examinations in Canada, ensures that NPs provide a high standard of care across the country. We believe that nurse practitioners are a key ingredient in the effective and efficient delivery of the second stage of medicare.

The Nurse Practitioners' Leadership Group of the AOHC has reviewed the HPRAC report and its recommendations and offers the following summary comments:

A commitment to legislating open prescribing would be consistent with the Ontario government's leadership role in regulating the nurse practitioner role in 1998. Studies clearly demonstrate that open prescribing enhances patient access to care, reduces wait times and lowers costs to the system. In addition, other jurisdictions, including five Canadian provinces, 48 US states and the United Kingdom, have open prescribing for nurse practitioners that is based on solid evidence and national standards of care. This decision would further the government's objective of providing high-quality, safe and accessible patient-centred care to all Ontarians.

It is critical that other pieces of legislation, including the Health Protection and Promotion Act, Immunization of School Pupils Act, the Mental Health Act and the Highway Traffic Act, must be changed to reflect Bill 179. In order to function to their full potential, nurse practitioners need to be able to admit and treat patients in hospitals, be able to refer to specialists without the restrictions based on provider payments and be recognized as primary providers by the various agencies of the Ministry of Health and Long-Term Care.

Extensive research overwhelmingly supports the safe practice of NPs in a variety of health care settings. NPs have been practising safely in Ontario for more than 30 years, as evidenced by data from the Canadian Nurses Protective Society, which indicates no experience in claims awards for NPs practising in Canada or the US.

In conclusion, as a long-standing employer of nurse practitioners and interprofessional teams, the Association of Ontario Health Centres strongly supports open prescribing. Bill 179's intention to improve access to health care to the province of Ontario by better utilizing health care professionals and strengthening the health professional regulatory system will only be achieved by reducing barriers and expanding the prescribing rights of professionals, the opportunities for professional practice and the principles of self-regulation with the College of Nurses of Ontario.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Goodine. About 40 seconds each: the PC caucus. Ms. Elliott?

Mrs. Christine Elliott: Just a quick question. Thank you for your presentation. With respect to open prescribing, you mentioned that there were five other Canadian provinces which have adopted it. Could you just let me know which ones they are?

Ms. Wendy Goodine: When we put the legislation through in 1998, the choice to have lists was because of the necessities of the time. Many of the other provinces learned from Ontario, as we were the leading edge. They chose, when they integrated the nurse practitioner role, to go with open prescribing, recognizing the barriers that it created for NPs. So British Columbia, Newfoundland, Alberta, Nova Scotia—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Elliott. Madame Gélinas?

M^{me} France Gélinas: Is there any evidence that it is safe for nurse practitioners to have open prescribing?

Ms. Wendy Goodine: Nurse practitioners have been overwhelmingly studied. Right now we have 12 randomized, controlled studies and over 1,200 papers demonstrating the safety of nurse practitioner practice. Currently, there are no randomized controlled studies that show that NPs are not safe and that open prescribing leads to any kind of endangerment of practice.

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Gélinas. To the government side: Mr. Balkissoon.

Mr. Bas Balkissoon: The legislation allows nurse practitioners to do the setting and casting of fractures. The OMA was here, and they showed concern with regard to that particular scope of practice. Can you shed

some light on when a nurse will actually set a fracture and when they would refer it?

Ms. Wendy Goodine: I think the setting of fractures is an example of the diverse practice settings of nurse practitioners. Some nurse practitioners work in very isolated communities or in areas where they may be one of the primary providers in small hospital settings. Many nurse practitioners work in emergency rooms—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Balkissoon. Thanks to you, Ms. Goodine and Mr. Davidson, for your deputation and written submission on behalf of the Association of Ontario Health Centres.

REGISTERED NURSES' ASSOCIATION OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I would now respectfully like to call our next presenter, who is Ms. Doris Grinspun, executive director of the RNAO, Registered Nurses' Association of Ontario, and colleague. I would invite you to please, first of all, introduce yourselves and to please begin.

Ms. Doris Grinspun: Thank you. Good afternoon. My name is Doris Grinspun and I'm the executive director of RNAO. RNAO is the professional organization for registered nurses, who practise in all roles and sectors across Ontario. Our mandate is to advocate for healthy public policy and for the role of registered nurses in shaping and delivering health services.

1430

I'm very proud to be joined today by Theresa Agnew, a nurse practitioner of excellence and member of RNAO's board of directors.

RNAO applauds the government's goal to enhance patient safety by increasing access to needed health care through expanding the scope of practice of health professionals within their education, knowledge and competencies.

Though there are a number of welcome changes contained in the bill that would significantly improve public access and reduce wait times, RNAO is deeply disappointed that without amendment, Bill 179 will continue to hamstring and underutilize health professionals and unnecessarily limit access—compromising, by that, the health of Ontarians.

We focus our response on three key concerns: lack of review of scope of practice for registered nurses; legislative limitations placed on nurse practitioners' practice, specifically in relationship to open prescribing of pharmaceuticals; and regulatory limitations placed on nurse practitioners' practice in relationship to admitting, treating and discharging clients to and from in-patient units in hospitals and other settings, the certification of death, and NP referral to specialists.

We also want to speak about advancing patient safety, a government agenda that is dear and central to the government, by strengthening interdisciplinary practice. For that, we ask that medical advisory committees, MACs, be transformed into interdisciplinary advisory committees, IPACs, which already exist in the LHINs.

While we will speak to the need for legislative amendments to Bill 179, the RNAO also asks the committee to recommend regulatory changes to the minister that would be complementary to the objectives of Bill 179 and would improve patient safety.

Let me start with RNs. RNAO is gravely concerned with the blatant failure of Bill 179 to review the scope of practice of the nearly 100,000 registered nurses in Ontario and to recognize the RNs' high level of education, knowledge and competencies. The practice and role of RNs continuously evolves, with changes in work environments and technology, as well as educational and policy parameters. Bill 179, as it is currently written, represents a major lost opportunity to better serve Ontario's public by modernizing RNs' scope of practice.

RNAO calls for an amendment to Bill 179 authorizing registered nurses to dispense and compound drugs, communicate a diagnosis to a client and order simple X-rays and mammograms.

In a variety of contexts, RNs already dispense and compound medications, utilizing medical directives for patients who meet specific criteria or as a delegated act to respond to a particular client's situation. For example, RNs and RPNs dispense medications to sufficiently cover hospitalized clients or long-term-care residents who have been granted a leave of absence from the facility, like a weekend leave from a psychiatric or rehab unit or nursing home, but who need to continue with their medication treatment regime.

RNAO also calls for the authorization for RNs, with the appropriate education and knowledge, to order simple X-rays of the chest, ribs, arm, wrist, ankle and foot, as well as to use energy such as electro-coagulation and defibrillation. Authorizing an RN to order a chest X-ray early in the assessment of an infant in respiratory distress, for example, would aid in the swift assessment and treatment of pneumonia. RNs frequently take the lead in coordinating health promotion programs such as breast screening clinics, and authorizing an RN to order mammograms would promote early identification and risk reduction for the clients. It simply makes sense.

The regulation which governs the application of energy also needs updating as it has not kept pace with technological changes. While some acts are outside nursing scope, like nerve conduction studies or electroconvulsive shock therapy, similar acts are now in the public domain, like cardiac defibrillation in hockey arenas and shopping malls. RNs regularly perform acts under delegation or medical directive, and RN first assistants regularly perform electro-coagulation during surgery. We detail these in our submission.

I will pass it on to Theresa.

Ms. Theresa Agnew: I'd like to address the legislative limitations on nurse practitioners' scope of practice.

RNAO is deeply disappointed with the failure of the legislation to lift the onerous limits on nurse prac-

titioners' ability to make use of the most appropriate and current medications for their clients. Even the most efficient listing or delisting process cannot keep pace with rapid technological change, evolving pharmacological treatments and evidence-based practice, thus leading to real-time delays in client care.

It is not a regulated list of drugs or tests that ensures appropriate prescribing, ordering and monitoring by nurse practitioners; rather, it is the nurse practitioner's competencies in health assessment and diagnosis, health care management and therapeutic intervention, health promotion and prevention of illness, injury and complications. The professional role and responsibility: That is what promotes safe practice.

Here's one example which is both timely and compelling. With the imminent arrival of the 2009 flu season. nurse practitioners in the province are preparing for a surge of illness, which we can prevent by offering clients the influenza vaccine. However, if the H1N1 influenza virus remains the primary circulating virus, as is predicted, nurse practitioners will be unable to prescribe that specific vaccine to their clients, as it will not be placed on their designated list in time to be any good.

RNAO recommends that nurse practitioners be authorized to openly prescribe within their full scope of practice without having to refer to lists, as is already happening in most Canadian jurisdictions and certainly across the US. Ontario would be an isolated outlier if Bill 179 were passed with the proposed list-based approach. This is not

the kind of leadership we expect from Ontario.

RNAO also notes the absence of authority for nurse practitioners to order MRI and CT scans and the anatomical limitations with respect to NP ordering of diagnostic ultrasound and X-rays. The level of assessment conducted by a nurse practitioner prior to the ordering of any diagnostic imaging or laboratory test is very thorough, and authorizing the ability to order these specialized images would not only increase the overall efficiency of nurse practitioner assessment and treatment but would also reduce costs to the system as a whole.

RNAO also strongly urges the committee to support regulatory amendments to regulation 965 of the Public Hospitals Act to authorize nurse practitioners to admit, treat and discharge hospital in-patients, to certify the death of a client and to refer clients to specialists on the same basis as physicians. We detail the latter two in our written submission.

Regulation 965 significantly limits nurse practitioners from opening access to the public by working to their full scope in a hospital in-patient setting. At present, they are only entitled to admit and discharge clients from an outpatient setting like clinics or hospital emergency rooms. They have not been granted privileges to admit a client from the emergency room to an in-patient unit or from one in-patient unit to another.

The Chair (Mr. Shafiq Qaadri): Less than a minute left.

Ms. Theresa Agnew: Okay. Similarly, the order for the client to be discharged can only be made by the

attending physician, midwife or dentist. There are substantive delays in patient flow, which are the direct result of physicians being unavailable to write admission and discharge orders. A clear, effective way to reduce wait times is to grant nurse practitioners expanded hospital

RNAO strongly supports the development of a health care system utilizing a client-centred model, where Ontarians have access to continuity of care and continuity of caregiver from a primary health care provider.

In order to achieve the objective of improved, streamlined access for clients and full integration of nurse

practitioners-

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Agnew, and thank you, Ms. Grinspun, for your deputation and your presence and the written materials that you've left.

ONTARIO DENTAL ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I would respectfully now invite our next presenters to please come forward: Ms. Samek of the ODA, the Ontario Dental Association, and any colleagues. Welcome, and I would invite you to please begin now.

1440

Ms. Linda Samek: Good afternoon. I'm Linda Samek, the director of professional affairs with the Ontario Dental Association. With me today is ODA's director of government relations, Mr. Frank Bevilacqua. The ODA is extremely interested in the legislative proposals outlined in Bill 179, the Regulated Health Professions Statute Law Amendment Act, and is pleased to have this opportunity to speak to the standing committee about this complex legislative initiative.

The ODA and its members remain committed to the delivery of quality oral health care within a clear accountability framework. Quite simply, we believe that the Regulated Health Professions Act, the Dentistry Act and related regulations establish a comprehensive accountability framework for the dental profession. This regulatory framework takes into account the interests and

needs of the public.

Nearly one half of the members of college councils are appointed by the Lieutenant Governor in Council. This means that there is direct public representation on the college councils and college committees. In addition, the existing provisions of the RHPA grant the Minister of Health extensive authority to "require a council to make, amend or revoke a regulation under a health profession act" and "to do anything that, in the opinion of the minister, is necessary or advisable to carry out the intent" of the RHPA or a profession-specific act.

In our time with the committee today, we wish to comment on the following sections of Bill 179: the appointment of a college supervisor, expert committees and prescribing and use of drugs in dental hygiene.

The ODA was shocked to learn that those advising the ministry on the drafting of Bill 179 appear to have serious concerns about the accountability framework set out in the RHPA. As written, Bill 179 is an assault on the principle of self-regulation.

Under the RHPA, self-regulation takes a multipronged approach. Regulatory authorities must operate within a framework of the RHPA and profession-specific acts. Regulators hold individual practitioners accountable for maintaining the standards of care. There is a public complaint process. There is public representation on regulatory councils and college committees. Regulated practitioners must fund the governance and operation of the regulatory process. The minister retains substantive powers over regulatory colleges.

The proposal to appoint a college supervisor with the "exclusive right to exercise all the powers of a council and every person employed, retained or appointed for the purposes of the administration" of the RHPA and a profession-specific act sends a clear signal that there is a lack of confidence in the colleges to work within the accountability framework set out in the RHPA. The proposal for a supervisor undermines the concept of self-regulation in the minds of regulated health care providers and, perhaps more importantly, in the minds of the public. If implemented, this provision would send a chill over the regulators and regulated practitioners.

The bill provides no insight as to what would trigger the use of this clause. Equally important, there is no indication as to what would trigger the removal of the supervisor. In the event that a college council and/or staff, including the registrar, saw the appointment of a supervisor as a vote of non-confidence, causing them to resign, there are no clear provisions for a transition to the election or appointment of a new college council.

Without understanding the origins of this clause, the ODA is unable to suggest a solution that may address any underlying concerns. Notwithstanding this information vacuum surrounding the proposal to appoint a supervisor to act for a college, the ODA believes that the existing RHPA framework provides extensive powers to the minister. As noted, the minister already has the authority to require a council to do anything that the minister deems necessary or advisable. The minister has the legislative authority to act swiftly to address virtually any situation.

The ODA strongly urges that all references to the appointment of a college supervisor be deleted from the bill. Sufficient powers are granted to the minister to make the option of appointing a college supervisor completely unnecessary.

The ODA recommends that the expert committee be limited only to matters related to drugs and no other matters. This limitation still permits colleges and associations to work collaboratively through the formation of expert committees on an ad hoc basis without impeding the work of college councils. Again, we believe that an expert committee needs to look only at drugs.

Finally, we want to look at the Dental Hygiene Act. The bill proposes to add "prescribing, dispensing, compounding or selling a drug designated in the regulations" to the Dental Hygiene Act. Without the corresponding regulations, the ODA cannot understand the full intent of this clause. However, the ODA acknowledges the thorough review of this matter undertaken in the development of HPRAC's Critical Links report.

HPRAC's drug review process included experts who took a comprehensive, balanced approach to the prescribing and use of drugs. Through the consultative process, the experts considered the education and training of dental hygienists in Ontario with (1) the need for dental hygienists to prescribe and use drugs related to their scope, and (2) the potential benefits and risks to the public in expanding the role of dental hygienists with respect to the prescribing and use of drugs.

The ODA supports the recommendation in HPRAC's Critical Links report that would permit dental hygienists to prescribe and dispense chlorhexidine and topical fluoride as preventive treatments. In reviewing the education of dental hygienists, HPRAC found "that pharmacology courses in dental hygienists' studies provide an overview of pharmacological actions and interactions." However, as noted by HPRAC, it is important for dental hygiene students to have more education and training in areas of anatomy, biochemistry and physiology as well as a more in-depth understanding of pharmacotherapeutics before being permitted to prescribe and use additional drugs.

Despite the findings in the HPRAC report, the College of Dental Hygienists of Ontario continues to recommend that the "Dental Hygiene Act be amended to grant dental hygienists access to the controlled act of administering a substance by injection ... relating to the administration of local anaesthesia." Based on the education and training of dental hygienists in Ontario, the Critical Links report noted that "HPRAC is not prepared to recommend that dental hygienists be authorized to independently administer substances by injection or inhalation."

With specific reference to dental hygiene proposals to administer local anaesthetics, HPRAC wrote: "At the best of times, this is a delicate task, requiring significant training and skill. Pain management courses of limited duration do not prepare dental hygienists to perform this task. The dental hygienist is well qualified to identify the need for an anaesthetic and to make a referral to an appropriate health professional to perform the procedure."

Like HPRAC, the ODA believes that any change to the prescribing and use of drugs by dental hygienists must be based on comprehensive education to ensure that appropriate theory and hands-on experience provide dental hygiene students with sufficient background to move this knowledge and training experience into practice.

The Chair (Mr. Shafiq Qaadri): Just under a minute, Ms. Samek.

Ms. Linda Samek: The ODA also supports a component of an undergraduate/graduate education program being in "academic facilities." Accordingly, the ODA only supports permitting dental hygienists the authority to prescribe and use fluoride and chlorhexidine oral rinses for preventive purposes.

Finally, in keeping with the collaborative and consultative process envisioned in the RHPA and this bill, the ODA also recommends that dentists be on the collaborative committee formed to develop standards of practice for the prescribing, dispensing, selling and compounding of any drugs by dental hygienists.

The ODA is very grateful for this opportunity to present our comments, and if there's time, we'll certainly take questions.

The Chair (Mr. Shafiq Qaadri): We'd like to thank you, Ms. Samek, and your colleague for your precision-timed remarks.

1450

ONTARIO PHARMACISTS' ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters, from the Ontario Pharmacists' Association, Mr. Darby, Mr. Miller and Mr. Malek, to please come forward. Gentlemen, welcome. I invite you to please begin.

Mr. Dennis Darby: Good afternoon. My name is Dennis Darby. I'm joined by Dean Miller, the chair of our board of directors, and Allan Malek, our vice-president of professional affairs. I am glad to be here to address Bill 179 and to share with you the views of the Ontario Pharmacists' Association, OPA.

OPA is the largest voluntary pharmacists' association in Ontario, and in fact in Canada, with more than 7,200 of the 10,000 registered pharmacists in the province as members.

A recent poll placed pharmacists and physicians as the two most respected and trusted professions in Canada. While physicians, nurses and nurse practitioners are, of course, the cornerstone of front-line patient care, pharmacists, particularly in community settings, are often the very first and most often consulted health care professionals for patients. So a tremendous opportunity exists to leverage both this high level of trust from the public and the practical and academic skills of pharmacists to enhance patient care.

We know that an aging population comes with increased reliance on medication and therapy. It's these medications that help Ontarians live independently and longer and, when combined with so many other stresses on our health care system, including pandemics of infectious diseases and escalation in chronic disease incidents, medication therapy contributes to a confluence of change and challenge that requires all of us to respond quickly, flexibly and with an open collegiality. The pharmacy community is ready to do so.

Bill 179 is clearly establishing the necessary conditions for such change. For us, it enables a number of key legislative tools that will allow pharmacists to strengthen the contribution they make to patient care in collaboration with our health care partners, and we are very pleased with this intent.

OPA is also committed to an interdisciplinary approach to the development of protocols and treatment

algorithms that ensure patient safety and introduce consistency in approach across all health care professions. Pharmacists, as you may know, are well accustomed to collaborating with prescribers when dispensing medications and caring for patients, and we see this only getting better.

We are, however, concerned about any broad-based changes to the Drug and Pharmacies Regulation Act, DPRA, that would permit dispensing without the physical presence of a pharmacist, regardless of location. This is a matter that needs further attention: certainly changes to the language of the bill and perhaps a pilot test of how changes will be implemented in rural and remote locations.

Furthermore, OPA recommends that if multiple regulated health professions are granted the ability to dispense, compound and sell drugs, the standards for these controlled acts should be developed and enforced by all professions at the highest level, which we believe is the standard that exists for pharmacists, as regulated by our own college and by the government.

A related issue leads to my next point. OPA requests that pharmacists be recognized in regulation 965 of the Public Hospitals Act, conferring to hospital-based pharmacists the same range of authorities granted to pharmacists within the community as part of an increased scope.

We believe there are further opportunities to do even more; for example, to provide routine immunization to patients, as occurs successfully in jurisdictions such as all 50 US states, the UK, Australia and parts of the EU, as well as Alberta and British Columbia. Ontario needs to keep pace. Especially in the event of a public health need like a pandemic, it would be useful to have all hands on deck, so to speak.

There are two issues related to oversight that I would like to comment on. First, Bill 179 proposes many changes to the Ontario Drug Benefit Act, ODBA, which could have a significant effect on Ontario's pharmacists. We believe that the executive officer of the public drug program currently has sufficient powers under that act and its regulations to ensure that the plan is judiciously administered. In addition, the proposed concept of different fees for different delivery settings needs to be further defined.

Secondly, on the issue of the college supervisor, OPA fully supports the College of Pharmacists in their position that this new role is unnecessary and would prove detrimental to the concept of self-regulation.

At this point, I'd prefer to use the last few minutes to make some comments on the larger context of change in which we find ourselves.

In all sectors—education, criminal justice, social development—there's a shift away from silo thinking towards more horizontal and integrated ways of delivering service: collaboration between and among professionals. It's not only the right thing to do; it's also the cost-benefit imperative for all of us.

As an appendix to our written submission—I thankfully will not read the whole thing for you today, if that's

okay—OPA has included a health economic analysis of the value of pharmacy services that should be of interest to this committee and to the government. It includes data on significant savings to the system when pharmacists practise in the new controlled access proposed in the bill. This in-depth analysis about how resources would be deployed or redeployed to provide the care and access Ontarians want and need from the health care system shows the true value of change.

As we contemplated what more pharmacists could provide in the face of a pandemic or emergency such as H1N1, we realized that we do have a role to play, one that was referenced in the September 2008 interim report from HPRAC that preceded Bill 179. I'd like to share with you what I think is a great example of things starting to come together.

HPRAC recommended that a number of professions should collaborate on the development of a minor ailments program for Ontario. This initiative would be led by the OPA and the college of pharmacists and would proceed in full collaboration with the ministry, the medical and nursing professions and their regulatory colleges and other health care professions. This program would see patients going to their pharmacist as the first point of contact to deal with a defined range of minor ailments, like athlete's foot, minor infections, poison ivy or cold sores, to name a few. Such a program, which is predicated on a defined set of protocols and treatment algorithms, including referrals, already exists in the UK. We would like to help make this a reality. The program would facilitate access to care, certainly decrease ER wait times, increase GP capacity for more important things and ultimately increase the overall efficiency, with some cost savings. This would be a first for Canada, and we look forward to expediting the initiative.

While not specifically related to this bill, we'd like to make a recommendation to the committee. In the face of the looming H1N1 pandemic, we propose that pharmacists should be tasked now to begin to assess and treat specific minor ailments. The government has the authority under subsection (4), paragraph 12, of the Emergency Management and Civil Protection Act to direct pharmacists to take this role. Such a step would surely take pressure off of doctors' offices, walk-in clinics and emergency rooms and allow them to focus on truly sick patients in the case of a pandemic. With some one-time funding to get pharmacists training, we could execute this plan relatively quickly. It's a small step and it certainly won't alleviate congestion of the system during a pandemic, but it's one way that pharmacists could step up and play a contributing role.

In conclusion, I'd like to remind the committee that pharmacists by their nature and practice are conservative, detail-oriented professionals who have the confidence of the public and have unique skills and knowledge. Before entering the four-year bachelor degree program, almost all students have at least two years of university experience, and more and more students—in fact, over 60% of the incoming class at the University of Waterloo this

year—have at least a bachelor's degree in science prior to entering pharmacy school. During their training, they practise alongside physicians and nurses.

The changes in scope of practice in Ontario will begin to bring us in line with the most modern jurisdictions. We are ready to work with our regulatory colleges to put protocols in place and begin the transition towards more defined community and institutional health care for patients by pharmacists.

Henry Thoreau said, "Things do not change; we do." I think it is true today. While it may be disruptive and somewhat uncomfortable, we don't have a choice. It's easy to keep things as they are, but if we don't change, we won't rise to the challenge, and we will fail to provide the level of care Ontarians need and deserve from the system. We are ready to do our part to make a stronger contribution to the health care of Ontario.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. Elliott, 40 seconds.

Mrs. Christine Elliott: I'm interested in the minor ailments program that you were discussing. Do you know where it is right now in the mix and why it hasn't come along sooner than one would have hoped?

Mr. Dennis Darby: The minor ailments program was in the HPRAC report but was not included in the bill per se. Granting the legislative ability for pharmacists to prescribe certain schedule 1 drugs is in the bill, but right now, it's limited just to drugs for smoking cessation. This would require them to go a little bit further than they are today.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas?

M^{me} France Gélinas: Would you have examples of where pharmacists actually do routine immunization?

What happened with the record-keeping of all of that?

Mr. Dennis Darby: Routine immunizations are done in Alberta now. There is record-keeping that goes back to the physician. In other states in the US, their regulations vary—in all 50, the regulations exist where the pharmacist is required to keep a record and to share the record with the primary care provider.

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon?
Mr. Bas Balkissoon: Just to say thank you very much

for coming forward and presenting to us.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Darby, Mr. Miller and Mr. Malek, for your deputation on behalf of the Ontario Pharmacists' Association.

PHARMATRUST

The Chair (Mr. Shafiq Qaadri): I'd now invite Mr. Jim Gay of Patient Care Automation Services to please come forward.

Interjection.

The Chair (Mr. Shafiq Qaadri): We'll be happy to distribute that. And to your colleague, I'd invite you to please begin.

1500

Mr. Peter Suma: Good afternoon. My name is Peter Suma and I'm the president of PharmaTrust. I have with

me our chief director of pharmacy, Ms. Sandra Tadros, who is a pharmacist.

PharmaTrust strongly supports Bill 179. We understand the aims of Bill 179 to increase access and interprofessional collaboration. We believe the bill, as drafted, achieves many of these objectives. But we wish to speak particularly about remote dispensing.

Remote dispensing allows pharmacists to potentially be available whenever and wherever and dramatically extends the footprint of pharmacy services in the province of Ontario. As an example, we are deploying, under hospital and clinic law, remote dispensing systems in the province. They have been up and operating, actually, for five years under northern projects undertaken by Northern Pharmacy, and we have been in production for two years at Sunnybrook hospital, Albany clinic, Cambridge Memorial Hospital, and the list is growing. And we are looking to deploy a trial project in an extremely remote location with an aboriginal community, which would see the first and only 24-hour available health care in that particular jurisdiction. Technologies commonly available and commonly used by Ontarians in this province every day, now freely, easily and economically affordable, can and should be brought to the practice of pharmacy.

Canada has long been a pioneer in the development of new infrastructure and distance technology—the telephone, cellphone, television etc. This is an opportunity to once again lead. We hope to see the day when every parent in Ontario, in any Ontario community, can receive a pharmacist's counselling, and when the pharmacist plays a larger role in the health care of Ontarians. That role should be available at any hour of the day at any point in this province, where, in the middle of the night, a parent could receive, in any town, regardless of size, dispensing and pharmacy counselling.

At the touch of a screen or the lifting of a phone, an Ontarian should be able to speak to a pharmacist, or a physician, for that matter, whenever they need to. Such things are available today with the simple leveraging of existing and ubiquitous technologies.

The day when all of our complex health records, deployed over the same infrastructure, could be confidentially transmitted and explained by a live health care professional is here, should we will it to be. The day when we're prepared for the next pandemic, with a primary care infrastructure system able to service at least two or three times the throughput of the existing health care system, with no additional cost, is here. We simply have to choose to use it. The day when this infrastructure is available, with no additional capital cost to the government—simply utilizing the existing fees that are paid, in the billions of dollars, into the drug budget in Ontario—is here.

The changes we are asking for in the wording of Bill 179: Despite all of these changes, we understand that these are big changes for the pharmacy system and pharmacy legislation. While the hospital act and the physicians' act both permit this and are the basis upon which

the existing systems deployed by us and others in the province have been utilized, the Pharmacy Act is approaching it with all the depth of consideration that pharmacy is known for, and with an eye to safety.

However, fundamentally, the safety of any of these systems, be it the telephone, a remote dispensing station, robotics, which exist in pharmacies and hospitals across this province—the existing systems rest upon one thing: the professional judgment of a pharmacist. We ask that Bill 179 be modified so that it too rests upon that professional judgment of the pharmacist, and that the regulations that fall from Bill 179 not be unduly limited so that the benefits of these technologies are, in fact, made available and the spirit and intent of the legislation is actually brought to life in the industry and in the community for the benefit of Ontarians and pharmacists.

In pursuit of such, we propose two definitional changes: One is to incorporate a definition of remote dispensing, and another to incorporate a definition of a remote dispensing location—"remote dispensing" meaning dispensing at a remote dispensing location under the authority of a pharmacist or other authorized person through technological means; and "remote dispensing location" meaning a place where drugs may be dispensed remotely, pursuant to the authority of a pharmacist or another authorized person and subject to the approval of the college of pharmacy.

To clarify what remote dispensing is about, it is about Ontarians catching up to a trend that is sweeping across regulated pharmacy professions in western, socialized-medicine countries. I just came back from the UK. Our company has been given full approval to go ahead and deploy remote dispensing stations in hospitals and clinics in the United Kingdom, something we expected to take two more years, although it has been publicly announced to be the United Kingdom government's priority. We are also in the late final stages of a discussion with a jurisdiction and a large partner in the United States, and we expect both of those to come to fruition in 2010.

Remote dispensing is also about taking the leadership position for Ontario and not waiting the three years to watch it be proven safe somewhere else, proven to extend pharmacy benefits, increase systematic capacity and lower costs, and turn around and find out that we could have, and should have, been the first. It is safe. It has been five years in trial in Ontario. The time now is to deploy it and make it available to everyone.

Remote dispensing is not about compromising safety. It is not about compromising selection. The machines and the technology have advanced dramatically. It is not about accepting fraudulent scrips; it actually, in my opinion, is superior in terms of audit trail and fraud identification. But fundamentally, no machine and no handwriting recognition exists in this world to replace the judgment of a pharmacist. That's why our systems and those that have been deployed are fundamentally based on the human pharmacist's professional judgment.

For remote dispensing, the legislative and regulatory process should not be about creating barriers to the attainment of these efficiencies and gains for Ontarians and the profession even if they are quite shocking to the status quo. It should be about preserving the spirit and intent of the legislation and the efforts that have been three years in the making, and going forward and seeing that spirit and intent implemented under the guidance and control of the Ontario College of Pharmacists, but with an intent not to limit the spirit and intent of the legislation and render the proceedings of Bill 179 invalid by virtue of limiting commercial operational efficiencies and economic viability.

We are not choosing here to enable anything new. It has already existed for years in this province. Telepharmacy, as some call it, brings significant advantages. Imagine. One retailer alone that we have spoken to, if deployed, would increase the number of pharmacist-available hours in the province of Ontario by 16% without a single dollar spent by the government. If you don't believe this is an issue, google it, the Sudbury Star website. There was a great debate about the fact there are no 24-hour pharmacies, save one, available in the outlying areas, let alone in Sudbury. The public is blogging about these things. It would bring 24-hour health care to all of these communities. What a great gift of the Legislature.

In conclusion, we would like to see the spirit of Bill 179 implemented. We look forward excitedly—our pharmacists, 10 of them, who have been using this technology consider it to be a platform and an opportunity and a tool that does not replace them in any way, shape or form. It can do nothing without their guidance, care, consideration and counselling of the patient.

I thank you for having us comment today.

Le Président (M. Shafiq Qaadri): Le plancher est à vous, madame Gélinas. Thirty seconds.

M^{me} France Gélinas: Merci. Which First Nation are

you doing your pilot in?

Mr. Peter Suma: The discussions are currently ongoing and not finalized, but it is Christian Island. The Beausoleil First Nation is the current discussion. It is not concluded as yet.

M^{me} France Gélinas: Where is that?

Mr. Peter Suma: It's in the middle of Georgian Bay on an island.

The Chair (Mr. Shafiq Qaadri): To the government side.

Mrs. Carol Mitchell: Thank you for your presentation. I just wanted to bring forward very quickly that there have been concerns raised about safety. I wanted to give you the opportunity very quickly to talk about the five years in trial and what you found from the information that was gathered during those five years.

Mr. Peter Suma: In short, I would conclude that many people call for, let's say—the reasons being that every dispense is weight, expiry, lot, storage temperature, UPC bar code image, cross-validated at the machine and the supply chain going through—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms.

Mitchell. Ms. Elliott.

Mrs. Christine Elliott: No questions. Thank you for your presentation.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Suma, and to your colleague for your deputation and written submission on behalf of Patient Care Automation Services.

1510

LYME ACTION GROUP

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenters to please come forward: Dr. Wilson and Mr. Manten of the Lyme Action Group. Welcome. I'd invite you to please begin.

Mr. Robert Manten: Good afternoon. My name is Robert Manten. I'm a Lyme disease patient and represent the Lyme Action Group, which supports patients with both acute and chronic forms of Lyme disease.

Dr. Douglas Wilson, also a Lyme patient, sends his

regrets. I'm speaking in his place today.

With me is another Lyme patient, actually a recovered Lyme patient, whose name is Ms. Karin Kiouman. We gratefully present to you today.

You may be wondering why a Lyme disease advocacy group would want to address the subject of Bill 179. There have been occasions in the history of medicine in our province where, to be frank, things have gone terribly wrong. Regrettably, Lyme disease is today one of those cases. However, we are optimistic that Bill 179 provides an opportunity to address some of our concerns. To explain how, I need to give you some background and context.

Presently in Ontario, it is very difficult to get a timely diagnosis of Lyme disease, yet a timely diagnosis is essential in order to avoid the serious chronic illness that results from undiagnosed Lyme disease. There are several contributing factors to the difficulties we now face.

First, a lack of reliable testing: The two-tier testing protocol used throughout North America, and also here in Ontario, has been shown in medical literature to give overwhelmingly false negative results. While there are more reliable tests available through certain labs in the US and Europe, the seriously flawed two-tier protocol remains the only OHIP-funded tool available to Ontario doctors today.

Second, a lack of experienced doctors: Presently in Ontario—in fact, across the country—there is only a handful of doctors experienced in the diagnosis and treatment of Lyme and chronic Lyme disease. Increasingly, patients are forced to seek treatment in the US or Europe at great personal expense.

Third, a lack of awareness: The most recent surveillance data from the US shows that in 2008 there were more than 35,000 new cases of Lyme disease reported to the CDC. The vast majority of these cases are in close proximity to Ontario's border with the US. The public health branch has kindly shared with us Ontario's surveillance data. In the last two years, reported cases of Lyme disease in Ontario have more than doubled,

according to public health. This information is not being effectively communicated to either the public or the medical community.

While it is outside of the scope of our discussion today, I would also mention that Canada is one of the few western nations that does not currently screen its blood supply for Lyme disease. Clearly, this is a disaster

waiting to happen.

There is divergent opinion in the medical community about Lyme disease, and chronic Lyme in particular. The two schools of thought are represented by the Infectious Diseases Society of America, IDSA, and the International Lyme and Associated Diseases Society or ILADS. The IDSA takes the position that chronic Lyme does not exist, with obvious implications for patient access to treatment, while ILADS has done extensive research demonstrating not only the existence of a chronic form of the disease, but has also developed long-term antibiotic treatment protocols that have restored the health of many chronic Lyme patients.

In 2008, the Attorney General of Connecticut concluded an antitrust investigation of how the IDSA developed its Lyme treatment guidelines. Many procedural flaws were identified, including a failure to consider the extensive body of research supporting chronic Lyme, as well as several of the guideline panellists having had undeclared conflicts of interest. As a result of that investigation, the IDSA agreed to a complete review of its guidelines, a review currently in progress. But in spite of the validity of the existing guidelines having been seriously called into question, they continue to be the mandated standard of care in Ontario, to the exclusion of any others. The Journal of Medical Ethics has recently covered this subject matter, outlining issues of systemic bias in the guideline development process, and documentation from the journal and the Attorney General is included in our package today.

To give a real-life example of these issues, currently in Ontario, there is a doctor trained and accredited by ILADS who is being investigated by the CPSO. There has not been one single patient complaint against him, yet the disciplinary proceedings are moving forward. The actions of the CPSO in this case have neglected to consider important legal precedents, such as the 2003 Supreme Court definition of a "true peer" for the purposes of one doctor providing an unbiased assessment of another, nor has it considered a 1993 Ontario Court Brett decision, which ruled that a doctor cannot be found guilty of misconduct solely because a disciplinary panel prefers a certain standard of practice, even one supported by the majority of the profession, as long as there exists a responsible and competent body of professional opinion that supports the doctor's actions. Clearly, ILADS meets the criteria of such a responsible and competent body. Nor has the CPSO considered the 2000 Kwinter amendment to the Medicine Act, which allows for doctors to use therapies that are non-traditional or that depart from the prevailing medical practice.

Perhaps the most disturbing aspect of such disciplinary actions is that patient outcome is considered ir-

relevant. Despite the government-ordered review in 2000 by KPMG, which noted that, "The health care delivery system is moving from a physician-centred model to a patient-centred model. To ensure public accountability, the CPSO decision-making model must follow in that direction," the CPSO still appears to ignore these recommendations. Speaking as a patient, that doesn't sit well.

The disciplinary proceeding against ILADS Lyme doctors is prevalent throughout the United States and, as in Canada, such medical politics interfere with the doctor-patient relationship. As American cases of Lyme disease have risen dramatically in the last quarter-century, some jurisdictions have recently taken legislative action to protect Lyme doctors, ensuring their ability to practise their protocol of choice and patient access to treatment. Such legislation recognizes that, while the debate is ongoing in the medical community, it is unacceptable that Lyme patients should be denied treatment, as is frequently the case.

Three states have now passed such Lyme doctor protection legislation. A fourth has achieved the same protection through the co-operation of its state medical authority, and, just last month, two more states have introduced similar doctor protection legislation.

In this context, Bill 179 provides a rare opportunity to introduce Lyme doctor protection to the RHPA, and we strongly recommend that it be added. Such protection clearly comes down on the side of patients to ensure access to treatment and would serve as a model for other emerging illnesses.

The current proposed amendments of Bill 179, particularly section 5.0.1, are timely indeed. Given the shortcomings described in the application of existing college disciplinary procedures, we believe that additional oversight of the CPSO is warranted. We, therefore, support the bill's provisions for a college supervisor and additional audits. These provisions will better enable the minister to fulfill his obligations to regulate and coordinate in the public interest by, first, protecting a diversity of responsible medical opinion; second, using supervision and audits to ensure colleges utilize their extensive powers in the public interest; third, eliminating systemic bias and emphasizing the importance of positive patient outcome; and, last, ensuring appropriate application of current legal protections.

These changes will only serve to enhance the regulatory process, to the benefit of all involved. Our written submission goes into greater detail of our recommendations with relevant references.

Patient outcome does matter, and we trust this will be a consideration for you as you deliberate over the details of Bill 179. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll start with the government side, under 30 seconds. Mr. Balkissoon.

Mr. Bas Balkissoon: Thank you very much for making your presentation and the input into the bill.

The Chair (Mr. Shafiq Qaadri): Ms. Elliott.

Mrs. Christine Elliott: Just a quick clarification: It's only the one recommendation for amendment that you're asking for, then, just Lyme doctor protection?

Mr. Robert Manten: That is something we would really like to see, in addition to supporting the additional oversight of colleges such as the CPSO, yes.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas.

M^{me} France Gélinas: Am I to understand that you would like the part that talks about oversight be clarified to include the four points?

Mr. Robert Manten: Yes, that would be correct. Yes. The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Manten and your colleague, on behalf of the Lyme Action Group.

ONTARIO SOCIETY OF PHYSICIANS FOR COMPLEMENTARY MEDICINE

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward: Dr. Rapson and Mr. Yazbeck of the Ontario Society of Physicians for Complementary Medicine. I'd invite you to please begin.

Dr. Linda Rapson: The Ontario Society of Physicians for Complementary Medicine, OSPCM, is an organization founded in 1997 and incorporated in 2006 as a not-for-profit medical society to serve as an umbrella body for physicians practising a variety of time-tested or innovative, evidence-informed health care approaches and techniques that complement and integrate with those taught in western allopathic medical schools. Such approaches and techniques are important to assist patients with chronic or emerging conditions who are not well served by, or who do not choose, prevailing methods and might otherwise have to go out of province or out of country for care.

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The Ontario Medical Association has a complementary medicine section to which OSPCM members generally belong. In addition, OSPCM members commonly belong to and have been trained by a variety of recognized, credible organizations in Ontario or other jurisdictions. These organizations sponsor courses and conferences in the focused-practice areas which are approved for continuing medical education credits in Canada, the US and internationally, and have respected faculty who are frequently university-based. For example, in addition to my medical training, I was trained by the Acupuncture Foundation of Canada, beginning in 1974, and earned a certificate of proficiency from them. The Acupuncture Foundation of Canada Institute is part of an international medical acupuncture organization which meets every four years for educational purposes. I have successfully integrated my skills in acupuncture into my chronic pain medical practice and now teach those skills nationally and internationally.

To summarize, members of the OSPCM are conscientious physicians who have spent time, money and effort to learn safe and effective treatments for chronic pain and conditions that ruin quality of life. Our case-

loads consist almost completely of patients who seek us out because their health problems have not responded to prevailing allopathic methods.

The OSPCM has worked to create greater knowledge and proficiency in various complementary medical approaches through education of regulated health professionals in Ontario. For example, the society currently hosts a two-part continuing education program accredited through the University of Toronto by the College of Family Physicians of Canada, the Royal College of Physicians and Surgeons of Canada and the American Medical Association. This program deals with nutrition, a long-neglected topic in most undergraduate and continuing medical education programs yet a vital determinant of health.

The OSPCM welcomes this opportunity to contribute to the government of Ontario's initiative to improve health care for Ontarians by presenting our perspectives on portions of Bill 179. Many of our members have grave concerns about the manner in which the College of Physicians and Surgeons of Ontario continues to treat our members under the current legislation.

Our main goal is to help the government meet its goals for Bill 179 by focusing on potential amendments to address needs for peer evaluation and procedural safeguards for both health professionals and their colleges.

We have invited Mr. David Yazbeck to summarize and focus on stated government goals for this legislation and to outline possible solutions to deal with some unintended consequences of amendments to the RHPA, which are explained in more detail in appendix A. Mr. Yazbeck is a partner in Raven, Cameron, Ballantyne and Yazbeck LLP, a prominent Ottawa legal firm specializing in human rights, employment and labour law, constitutional law and judicial review of government action.

Mr. David Yazbeck: Mr. Chair, members of the committee, Mr. Clerk, I know I don't need to tell you how important quality health care is to the citizens of this province. I do need to tell you that there are several serious legal impediments to the development of effective and innovative medical practices that are crucial to that quality, particularly for those who suffer from chronic pain or chronic diseases. I know that one of the goals of the Legislature in reviewing this bill is to alleviate their concerns.

The chief difficulty is that professional groups, especially those in the fast-changing world of medicine, often fail to accept what are legitimate and effective medical developments solely because they are different from the majority's practice. Yet we know that many significant and effective medical practices have developed in exactly this way, and acupuncture is one classic example. Many of these practices are crucial as well for chronic disease.

Unfortunately, the law provides insufficient protections for practitioners in these areas. Fortunately, you have an opportunity to change that. I stress that this is not a new concern. A previous presenter, for example, referred to the Medicine Act, and it's worth stressing that the Medicine Act states, "A member shall not be found

guilty of professional misconduct or of incompetence ... solely on the basis that the member practises a therapy that is non-traditional or that departs from the prevailing medical practice unless there is evidence that proves that the therapy poses a greater risk to a patient's health than the traditional or prevailing practice." That is a recognition by the Legislature of the importance of non-traditional practices.

Similarly in the Brett case, which the previous presenter referred to, Justice O'Leary stated, "If it be misconduct (or incompetence) to use methods and techniques that are foreign to or disapproved of by the vast majority in the profession, the profession might never progress. In the case of medicine, for example, acupuncture would probably not have become a method of treatment in Ontario."

What we are urging the committee to do is look at that policy that does exist here in Ontario and look at the manner in which medical professionals, especially those who practise complementary medicine, are regulated by law. The reality is that the law is not sufficient, and it has the effect of stifling innovation in medicine. This is because of the failure to assess physicians by true peers and by insufficient legal protections to ensure that physicians actually know how they're being dealt with by their college.

For this reason we urge the committee to seriously consider the comments in our brief. It's fairly lengthy. There are detailed comments in there to restructure the law to better protect these physicians and ultimately to improve health care in Ontario.

In the brief, I'll just refer you to the key passages, although I'd urge you to review the whole of the brief. Pages 4 and 5 deal with the question of "true peer" and how important that is to assessing physicians. Pages 7 to 9 deal with mandatory reporting and the significant negative effects that could result. Appendix A deals with that as well. Then pages 10 to 14 offer some concrete solutions for addressing these problems and ensuring that all Ontarians are entitled to the benefit of innovative medical practices.

Members of the committee, our proposals are designed to ensure not only legal fairness but medical thoroughness in the assessment of physicians in the province of Ontario, which would ultimately, of course, improve the health of Ontarians by improving its health care system.

To summarize, without adequate peer evaluation and procedural safeguards to ensure this fairness, we see a number of unintended adverse consequences, particularly as a result of mandatory reporting.

First, there would be loss of access for Ontarians to innovative health professionals and new methodologies, especially for those with emerging or chronic complex recalcitrant conditions.

Secondly, there would be a loss of ability to attract and keep health professionals because of a prevailing atmosphere of suspicion and distrust.

Thirdly, there would be deterrence of ongoing thoughtful, respectful interprofessional discourse and co-

operation to continually improve health care for the wellbeing of patients.

Without removing these barriers, efficiency as well as professional and public confidence in the health care system are likely to be seriously undermined.

By providing an initial opportunity for health professionals to respond to inquiries, complaints or reports, as well as to decisions to order broader investigations with a review of their responses by appropriate peers, many concerns may be addressed swiftly at the outset. Unwarranted expansion into time-consuming and costly investigation and discipline processes may delay colleges from addressing truly serious concerns in other—

The Chair (Mr. Shafiq Qaadri): You have under a minute left, Mr. Yazbeck.

Mr. David Yazbeck: Thank you—members' practices, in the public interest.

We believe, members of the committee, that peer evaluation and these procedural protections can and should be available at the initial assessment stage, through to completion, of any regulatory college evaluation process by amending the Regulated Health Professions Act in Bill 179. Such changes would be consistent with the government's changes in Bill 171, schedule D, to enhance the fairness of the medical audit process.

Members of the committee, many physicians are subject to review by their governing college in a way that does not provide them with a fair opportunity to know the case against them and to actually address it in a way that's fair and also consistent with health practice here in Ontario. We urge these changes to be made so that these physicians will be treated fairly and so that ultimately they will help in adapting and developing innovative medical practices which will benefit all of Ontario.

The Chair (Mr. Shafiq Qaadri): Thank you, Dr. Rapson and Mr. Yazbeck, for your deputation on behalf of the Ontario Society of Physicians for Complementary Medicine.

1530

SHOPPERS DRUG MART

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter to please come forward again: Mr. Miller of Shoppers Drug Mart and colleagues. I'd invite you to please begin now, and do introduce yourselves as well, please.

Mr. Dean Miller: Thank you. Good afternoon. My name is Dean Miller. I am the director of pharmacy in Ontario for Shoppers Drug Mart. I was introduced earlier on as the chair of the Ontario Pharmacists' Association, but these remarks are on behalf of Shoppers Drug Mart. Joining me today is Jeff May, our senior vice-president of pharmacy professional affairs and pharmacy business.

On behalf of Shoppers Drug Mart, I welcome the opportunity to participate in the public hearings on Bill 179. Shoppers Drug Mart is supportive of the recommendations being proposed in Bill 179 as they relate to pharmacists' professional services. We also believe that

an increased scope of practice for all regulated health professions is a bold and progressive step forward to better serve the people of Ontario.

Pharmacists have the knowledge, skills and professional judgment to perform any of the new controlled acts in the proposed legislation. And after all, many of the current acts give them regulatory authority to do the things that pharmacists have been doing for years. Enhancing the role of pharmacists will no doubt lower wait times and improve the overall efficiency of our health care system. We do, however, have a few concerns and recommendations which I will touch upon later on in my presentation.

What I thought I would do today is provide a practical viewpoint of the kinds of services that our pharmacists provide to Ontarians on a daily basis, based upon my experience. This will demonstrate the value pharmacists add to the health care system and how expanding the scope of practice would improve the health care of Ontarians.

About our company: Shoppers Drug Mart has 1,100 locations across Canada, 570 of those in Ontario. Our head office is located here in Toronto, and we employ approximately 2,100 pharmacists, both part-time and full-time, and over 30,000 people total across the province. Capital spending in 2008 was approximately \$750 million for infrastructure across Canada, the majority of it here in Ontario. And most uniquely, every one of our pharmacies is owned by an associate owner who is a pharmacist.

Pharmacists provide a whole range of vital services across the province—everything from advising on lifethreatening situations like a Telehealth nurse phoning a pharmacist with a poisoning situation related to medication or educating a mum on how to use an EpiPen injector save a child's life at school or when away from home, to minor situations like blister-packing medications for a senior or even how to treat a blister for that same senior. All of these services keep people out of doctors' offices and hospitals and allow many vulnerable Ontarians to live independently.

Access to health care is frustrating. Visiting a pharmacist takes some of that away because you don't need an appointment to see us. We are conveniently located and often open for extended hours to serve our patients. Shoppers Drug Mart now provides almost 50 locations in Ontario where people can access pharmacy services 24 hours a day.

I'd like to point out a number of specific examples that routinely occur on a daily basis in our pharmacies. Some of these are directly related to Bill 179, and others just illustrate enhanced services that pharmacists already provide. Medication compliance programs like compliance packaging occurs in almost all of our stores. These are complex medication regimens, sometimes containing 10 or more medications per package. Dosage adjustments and medication modifications with these patients can occur on a weekly basis. Pharmacists manage these patients and help them stay in their homes. Giving pharmacists the authority to extend their refills, make dosage adjustments and in some cases initiate and suggest new therapy keeps them in their homes and out of mainstream health care—a very good idea.

Pharmacists take an active role in monitoring patients who need dosage adjustments of their medication to control their blood clots, thus getting better control of their condition and preventing strokes and cardiovascular incidents. If allowed to actually pierce the patient's skin, the pharmacist can better manage a patient and minimize return visits back to the health care system—another very good idea.

Before attaining over-the-counter status, plan B, or emergency contraception, was initiated by a pharmacist in discussion with a patient. Patients benefited from easy access and proper advice and counselling from a pharmacist. Drugs for smoking cessation is a great beginning, but many other drugs and conditions exist where a patient could easily access these medications at the pharmacy level.

These are some of the services that we already provide every day and in every community across the province. I'd also like to share a few specific examples of how Shoppers Drug Mart pharmacists save the health care system significant dollars.

Our store in Scarborough, number 826, is a 24-hour store. It answered 632 Telehealth nursing calls in November 2008 between 11 p.m. and 8 a.m. That's 20 a night. These were drug-related calls related to medication issues with patients. It is highly likely that many of those 632 patients who reached a Telehealth nurse would have sought access to the health care system if that pharmacy had not been open through the night.

As a national pharmacy organization, our experience in British Columbia, Alberta and New Brunswick has our pharmacists already extending refills of maintenance medications and adapting prescriptions for patients. It's our view that in those provinces with escalating activity, citizens benefit from uninterrupted medication therapy, physicians' offices are more efficient, and pharmacies are more efficient—three very positive outcomes. Reports from patients are incredibly positive, particularly in communities where access to a family physician is limited or non-existent.

In Alberta, 68 of our pharmacists have received accreditation from the Alberta College of Pharmacists to administer medications by injection and, to date, have administered 1,650 medications by injection, mainly travel vaccinations. Again, patients benefit from the convenient access to a health care service, creating additional capacity in physicians' offices for patients who may not have access to physicians.

In a time of crisis, all health care professionals will be asked to do a little more. As the most accessible point of entry into the health care system, pharmacists offer many

benefits to public health in Ontario.

Finally, three of our pharmacists have already received advance prescribing certification from the Alberta College of Pharmacists. They provide prescribing support, working collaboratively with physicians in their community.

We encourage the Ontario government to adopt these regulatory changes in Ontario and, as such, support the Ontario Pharmacists' Association's proposal. These examples are consistent with the government's priorities: lowering wait times, chronic disease management and mental health and addictions. Allowing pharmacists to do more, like refill extensions and therapeutic modifications, would not only save the system money but, more importantly, it will mean better health care for Ontarians.

We do have one concern: remote dispensing. Best pharmacy care for patients is always face to face with a pharmacist. We are encouraged by the regulations around remote dispensing as proposed by the Ontario College of Pharmacists and believe strongly that technology or a machine could never replace a pharmacist.

We do agree that there are appropriate uses for technology in remote areas where convenient access to traditional service does exist to support optimal face-to-face care. Regulatory regimens exist in the United States that address this matter. As the Ontario Pharmacists' Association has pointed out, it may require some further review of this part of the legislation.

Pharmacy is currently working collaboratively with the ministry to modernize the current drug system in Ontario to provide cost savings and better value for money. Pharmacy has developed a framework that does this, but it's contingent on Bill 179 changes.

Shoppers Drug Mart has seen the future of pharmacy in Canada. Pharmacists in other Canadian jurisdictions are already initiating prescriptions, immunizing patients, extending refills and adapting prescriptions.

Shoppers Drug Mart looks forward to working with the government in continuing to deliver the kind of health care that Ontarians deserve.

Le Président (M. Shafiq Qaadri): Merci. Je passe la parole à madame Gélinas; 40 secondes.

M^{me} France Gélinas: Very well done; easy to understand; easy to follow. When you talk about remote dispensing, you wouldn't see every hospital having a remote dispenser?

Mr. Jeff May: The hospital perspective is a little bit different because it currently falls under a different regulatory regime. I think outpatient dispensing is something that is of benefit. Our focus in our submission is really to look at community-based non-hospital remote dispensing in remote communities where there isn't access to traditional community pharmacy services.

The Chair (Mr. Shafiq Qaadri): To the government side. Mr. Balkissoon.

Mr. Bas Balkissoon: These remote dispensing machines: If Shoppers Drug Mart was able to own them and have them remote from their own pharmacist, don't you see this as an improvement to patient access to prescription drugs?

Mr. Jeff May: Again, I think the issue is ensuring appropriate access in remote areas. We strongly believe that the nature of pharmacy services, particularly with the role this particular bill will put in place, requires face-to-face dialogue between pharmacist and patient. The

opportunity to have dispensing units to improve access in communities where pharmacies do not exist—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Balkissoon, Ms. Elliott.

Mrs. Christine Elliott: That was very clear. Thank you for your presentation.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. May and Mr. Miller, for your deputation and presence on behalf of Shoppers Drug Mart Canada.

ONTARIO ASSOCIATION FOR MARRIAGE AND FAMILY THERAPY

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter, Mr. Stafford of the Ontario Association for Marriage and Family Therapy. Welcome, Mr. Stafford. I invite you to please begin now.

Mr. Dexter Higgins: I am taking the place of him today. My name is Dexter Higgins and I am the secretary of the Ontario Association for Marriage and Family Therapy. I hold a bachelor's degree, two master's degrees, a doctorate and approximately four years of post-doctoral training. As a member of the Christian clergy, I pastor churches in Newfoundland and here in Ontario. I was a program coordinator in the Newfoundland school system developing and implementing curriculum. I am a registered social worker and a member of the Ontario College of Social Workers and Social Service Workers since 2004. Since 1988, I've engaged in marriage and family therapy and became a registered marriage and family therapist in 1995.

The Ontario Association for Marriage and Family Therapy, commonly called OAMFT, is a self-regulated organization founded in 1972 that maintains marriage and family therapist guidelines as the professional organization for over 800 members here in Ontario, 500 of whom are registered marriage and family therapists. The majority of the other 300 are in the process of becoming registered. Registered marriage and family therapists strive to honour diversity in ability, age, culture, ethnicity, gender, race, sexual orientation, spirituality and socio-economical status.

However, what all our MFTs have in common is that they are among the highest and most rigorously trained of any mental health professional in Ontario, and they have completed a minimum of a master's degree in marriage and family therapy or in fields such as medicine, education, nursing, psychology, social work or theology. They have completed 12 additional courses that are geared to marriage and family therapy. There has been the completion of a 300-hour supervised practicum and 1,000 hours of direct clinical contact, of which 50% must involve more than one person in therapy. There are 200 hours of clinical supervision, of which 50% must involve individual supervision. The actual ratio of clinical hours to supervision is one hour of supervision for every five hours of therapy. Our MFTs are uniquely qualified to provide mental health services and do so in community

mental health centres, hospitals, schools, employee assistance programs, family counselling agencies, children's health centres, universities and research centres

and in private practice.

At the outset, we wish to make it clear that the OAMFT is very pleased with the creation of the College of Psychotherapists and Registered Mental Health Therapists of Ontario. We are pleased with the addition of the term "registered" to the psychotherapist title, which now makes the title "registered psychotherapist." We are pleased with the exclusive use of the title "registered psychotherapist" by members of the College of Psychotherapists and Registered Mental Health Therapists of Ontario. We are pleased with the requirement that other colleges must cite their college membership in conjunction with the use of the title "psychotherapist." We strongly support the requirement that all regulated health professionals hold minimum professional liability insurance.

However, the OAMFT respectfully submits that Bill 179 be further amended by adding the following: Section 5 of the bill should be amended and the name of the college be changed by moving the term "registered" so that the college would henceforth be known as the College of Registered Psychotherapists and Mental Health Therapists of Ontario. We make this request for the following reasons: The term "registered" is already being used to describe mental health therapists in the name of the college. In our view, moving the term "registered" to appear before the term "psychotherapists" is both more reflective of the college's mandate to regulate both psychotherapists and mental health therapists and makes it clear to the public that this college only governs registered psychotherapists.

The second reason for changing the name to the "College of Registered Psychotherapists and Mental Health Therapists" is that section 23 of the bill allows other professionals, such as physicians and psychologists etc., to use the title "psychotherapist," but only if they use it in conjunction with their other title, such as physician-psychotherapist, psychologist-psychotherapist etc. It is very important to maintain a clear distinction between a registered psychotherapist and a hyphenated psychotherapist. This is a matter of public protection and clarity. The public needs to know where to seek accountability should a complaint against a professional performing psychotherapy be raised. It needs to be made clear that only registered psychotherapists are regulated by the college and that if a complaint is raised, for example, against a physician who practises psychotherapy, redress is available at the College of Physicians and Surgeons.

While the proposed amendments to the act create a clearer distinction between registered psychotherapists and hyphenated psychotherapists, the name of the new college does not. In keeping with our public protection concern and our desire to afford the public as much clarity as possible on this issue, we believe that the term "registered" in the name of the college should be moved

so that the college becomes the College of Registered Psychotherapists and Mental Health Therapists.

The OAMFT wholeheartedly supports the legislation's provision that requires that all regulated health professionals hold minimal professional liability insurance. We would, however, submit an additional requirement. The OAMFT makes the submission that regulated health professionals should be required to hold registration in their relevant college and membership in the professional association in order to be eligible to purchase liability insurance.

We believe that membership in a professional association, particularly one that requires ongoing continuing education, would be in the public interest, in part because it enhances professionalism and professional development and thus can result in fewer claims due to unethical conduct or incompetence. Requiring both college registration and association membership would highlight for professionals the relevance of professional association membership to college registration.

Thank you for allowing me to present my association's views on Bill 171.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Higgins. We have about 30 seconds or so per side, beginning with Mr. Balkissoon of the government.

Mr. Bas Balkissoon: I just wanted to say thank you very much for coming forward and making your presentation. I think your point has been well made.

The Chair (Mr. Shafiq Qaadri): The PC side.

Mrs. Christine Elliott: I would agree with Mr. Balkissoon. Thank you very much. Very clear.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas?

M^{me} France Gélinas: We all agree. Clear and concise.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Higgins, for coming forward.

ONTARIO SOCIETY OF DIAGNOSTIC MEDICAL SONOGRAPHERS

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter, Mr. Jozkow of the Ontario Society of Diagnostic Medical Sonographers and colleagues. Sorry—Kim Jozkow; Madame Jozkow. I would invite you to please come forward. Please begin.

Ms. Kim Jozkow: Ms. or Mrs. is fine. Good afternoon. My name is Kim Jozkow. I'm here today representing the over 700 members of the Ontario Society of Diagnostic Medical Sonographers, and I would like to thank you all for allowing us to present today.

Bill 179 presents an opportunity to provide muchneeded improvements to many areas of health care. The OSDMS supports many of the facets of this bill. However, today I would like to speak to a very specific point that is raised within the bill. It is in regard to the request of nurse practitioners to be able to apply ultrasound energy for the purpose of a diagnosis.

In part, this issue arises with respect to what constitutes a diagnostic ultrasound. According to the Regu-

lated Health Professions Act, a diagnostic ultrasound means "ultrasound that produces an image or other data." This leaves a large spectrum of what can be considered a diagnostic ultrasound, and I can refer you as well to the handout that I have provided today. At one end of the spectrum you have ultrasound in the form of a Doptone. This piece of equipment is relatively straightforward and it would require minimal training to become competent in its use. At the very other end of the spectrum, however, you would have an example of an echocardiogram. An echocardiogram is an ultrasound that fully evaluates heart structure and function, among other things. This type of ultrasound requires a high degree of skill, knowledge and judgment to perform. What the NPsnurse practitioners—have requested and what would be permitted by the passing of this bill is that they would be allowed to perform diagnostic ultrasound. This, by definition, would include the entire spectrum of these exams.

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Based on their standards of practice with nursing as a self-regulated profession, we can accept that nurse practitioners only perform procedures within their personal level of knowledge, skills and judgment. According to the decision tree in their standards, they must ask themselves, "Do I have the knowledge, skills and judgment to perform and manage all possible outcomes of performing this procedure?" If the answer to this question is yes, then they perform the task. If the answer is no, then they refrain from performing that task.

However, what happens if the nurse practitioner believes that they have the appropriate knowledge, skills and judgment but in fact they have been misguided in this respect? In the submission by the College of Nurses of Ontario to HPRAC for their request for the extended scope of practice, there were many inappropriate terms and misinformation around the use of ultrasound. In that document, the CNO made reference to using only low-frequency ultrasound and performing only bedside ultrasound. The OSDMS questioned the use of these terms as we felt they were quite misleading. Ultrasound is by definition high-frequency, and virtually any ultrasound examination can be performed at the bedside. From the point of view of sonographers, these terms demonstrated a lack of understanding around this technology.

We expressed these concerns to the CNO, the Ministry of Health and Long-Term Care and HPRAC. HPRAC did find in their report on the extended scope of practice for nurse practitioners that nurse practitioners should be granted access to this controlled act. It was suggested by HPRAC that the nurse practitioners could take on these additional tasks with the proposed environment of mentoring and with the use of interprofessional collaboration to guide them.

The OSDMS would like very much to work with the CNO on this issue; however, we were never asked before the submission that was made to HPRAC, nor were we identified as stakeholders.

The OSDMS is also aware that the ultrasound content within the current training programs for nurse prac-

titioners is cursory at best. So more questions arise: Who will be mentoring the nurse practitioners in this field? Who will the CNO be collaborating with to create a scenario where nurse practitioners are fully trained in the application of ultrasound? Who will ensure that the nurse practitioners are performing these tests appropriately? With the lack of understanding that has already been demonstrated by the College of Nurses of Ontario, it is with concern for patient safety that the OSDMS felt compelled to present to you today.

When HPRAC was holding its public hearings into the extended scope of practice for nurse practitioners, a few scenarios were presented as potential situations where a nurse practitioner could perform an ultrasound to benefit the patient. One of these scenarios is that of a long-term-care facility where a nurse practitioner could perform a venous leg Doppler on an immobile patient to determine the presence of a DVT without transporting them. Certainly a nurse practitioner with the appropriate knowledge, skills and judgment could perform that exam, but then that nurse practitioner would be trained to the same level as a sonographer.

A sonographer, under that scenario, would perform this potentially very difficult exam, then give those images to a radiologist to report to the patient's physician, who would then treat on its findings. Unfortunately, Bill 179 also gives nurse practitioners further extension to their scope of practice. So, potentially, you could have a scenario where a nurse practitioner identifies the need for the exam, performs the exam, interprets the results, informs the patient of their findings and then goes on to treat the patient based on those results. None of the usual checks and balances that are found in the health care system currently would be present if that scenario were allowed to unfold. But again, that would only be if the nurse practitioner felt that he or she were working within their knowledge, skills and judgment.

While the OSDMS recognizes that nurse practitioners, as a self-regulated profession, would likely not encounter this situation commonly, there is, however, a potential for a significant risk of harm to Ontarians. This seems especially true if one considers that the body that is safeguarding the public from the nursing profession seems to be the one misguided in its facts. It is for this potential risk of harm to Ontario patients that the OSDMS would like to request that with the passing of this bill, a strong suggestion be made to the CNO that parameters need to be set to provide guidelines as to what types of ultrasounds can be performed and with what training.

We also would like to encourage interprofessional collaboration with the appropriate groups that represent the profession of sonography, and that limitations be set as to which types of diagnostic ultrasounds are appropriate for the nurse practitioners to perform. With simpler point-of-care ultrasounds, the training required would be significantly less than the training for full, complete ultrasound exams. It is our hope that the OSDMS and similar societies will be allowed to help the CNO sort out the details of these types of exams.

I'd like to thank you once again for your time.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Joskow. About a minute or so per side, beginning with Ms. Elliott.

Mrs. Christine Elliott: Thank you very much for your presentation. I wonder if I could just clarify whether the society is against nurse practitioners being involved in any kind of ultrasound.

Ms. Kim Jozkow: No.

Mrs. Christine Elliott: You want to have a

consultation with respect to what can be done.

Ms. Kim Jozkow: That's exactly it, because there's such a broad range of potential exams. The Doptone exams, because the equipment is quite simple to use and it's quite straightforward, would take very minimal training to work with. The problem that the OSDMS has is, at the other end of the spectrum, you have these very complex exams. Currently, training in Ontario—there is a spectrum because sonography is an unregulated profession at the moment. The minimum amount of training for someone is a postgraduate program and it's about 18 months to be able to do a full-complement ultrasound exam, a full exam.

With that said, what concerned us about the conversations between HPRAC and CNO is that there never seemed to be any fleshing out, and I understand that—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms.

Elliott. Madam Gélinas?

M^{me} France Gélinas: Well, maybe continue. I was

interested in what you were saying.

Ms. Kim Jozkow: Our concern was simply that because the nurse practitioners haven't fleshed out what exactly is going to be incorporated in the education programs, the recommendations from HPRAC were quite limited and suggested only this environment of mentoring.

Our concern was, if the nurse practitioners are the ones doing the mentoring, without any consultation with sonographers, perhaps that's not going to allow for an

appropriate education for them.

M^{me} France Gélinas: Thank you.

The Chair (Mr. Shafiq Qaadri): To the government side. Mr. Balkissoon.

Mr. Bas Balkissoon: Someone else raised the same issue last week. I went back and read the legislation itself. It actually says that they're allowed to practise based on "the terms and conditions and limitations imposed on his or her certification of registration to perform the following...." So if they're trained and registered by their own college, would you have an objection?

Ms. Kim Jozkow: If they're trained appropriately by the college, that is completely sufficient with us. That's really all that we're asking to have happen. The issue we're raising is—because the CNO identified themselves as having a misunderstanding of the profession of ultrasound and the application of ultrasound, that was

where our concerns stood.

Mr. Bas Balkissoon: So if the minister takes the step to clarify this in his regulations, your organization will be happy. Ms. Kim Jozkow: Absolutely.

Mr. Bas Balkissoon: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Joskow, for your deputation on behalf of the diagnostic medical sonographers.

JOZEF KROP

The Chair (Mr. Shafiq Qaadri): I'd now invite Dr. Krop to please come forward. I understand you'll be speaking in your capacity as a private citizen. I would invite you to please begin.

Dr. Jozef Krop: Yes. I might even speak as a person who has dual citizenship. I am Polish and I'm also Can-

adian. I am proud to be Canadian.

The Chair (Mr. Shafiq Qaadri): Gin Dobriye.

Dr. Jozef Krop: Gin Dobriye.

Mr. Chairman and committee members, my name is Jozef Krop. I am a medical doctor, a Fellow of the American Academy of Environmental Medicine, practising environmental, preventive and orthomolecular medicine in Mississauga.

Thank you for allowing me to speak to you in support of Bill 179, specifically the amendment to appoint a college supervisor, which would provide an important first step enabling the government to support and protect patients with new and emerging medical conditions who fall between the cracks of a medical system which is unable to provide adequate solutions for them.

My submission is a vivisection of a case illustrating the pitfalls of power in the hands of a regulatory body

without adequate checks and balances.

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It is a documented fact that doctors in Ontario who want to help patients suffering from chronic degenerative diseases with newly emerging understanding of their causes and available treatments that do not fit the existing paradigm risk professional suicide. There is a systemic bias in the laws regulating health professions because standards of medical practice can be arbitrarily enforced through the sledgehammer method of disciplinary investigations instead of being established by scientific and collegial discussion and resolutions for the benefit of the patient.

I have practised medicine in Ontario for over 30 years. In the 1970s, I became interested in the new health problems, both physical and mental, caused by nutritional deficiencies as well as by toxins in our food, water and air, of which pesticides are one of the biggest causative factors. I express my gratitude to this government for passing the most comprehensive pesticide reduction law in Canada, which will reduce a great deal of human

suffering as well as health care costs.

In recent years, I learned that many symptoms associated with new diseases such as multiple chemical sensitivity, chronic fatigue and fibromyalgia as well as traditional conditions such as multiple sclerosis, rheumatoid arthritis, Parkinson's, Alzheimer's and certain types of childhood autism often are caused by borrelia

infections, which commonly cause Lyme disease. This is the fastest-growing vector-borne infectious disease in North America and in Europe. It should also rapidly become a priority for governments everywhere because borrelia and associated infections are transmissible by blood transfusion, as reported by the Canadian Medical Association Journal in 2001.

After training and certification in the International Lyme and Associated Diseases Society, I began to treat many chronically ill patients diagnosed with some of the above-mentioned conditions for Lyme. Surprisingly, most tested positive and responded dramatically to antibiotic treatment protocols developed internationally.

From 1989, I was under disciplinary proceedings by the CPSO, which lasted 13 years without patient complaint or evidence of harm, and I was charged with diagnosing and treating environmental allergies and sensitivities, including multiple chemical sensitivity. The CPSO opined that MCS was not yet a valid diagnosis and, therefore, could not yet be treated in Ontario. The charges included recommending to my patients water and air filtration, sauna therapy for detoxification, organic food, nutritional supplements and avoiding pesticides. In 1999, I was found guilty of failing to maintain the standard of practice of the profession.

Last year in June, the CPSO once again commenced an investigation of my practice, this time for diagnosing and treating chronic Lyme disease. Again, CPSO investigators did not consider this to be a real disease, relying on the advice of their medical "experts" who, in this case as in other complementary doctors' cases, are not true peers and are biased against both the diagnosis and treatment. Again, it was not patient complaint or harm that triggered this process.

When doctors are subjected to protracted disciplinary proceedings simply for practising in a new and emerging field, the whole society suffers, because medicine, as a science and as a practice, is then no longer patient-centred. Indeed, at many disciplinary trials, CPSO policies take precedence over patient outcome. I refer you to the glasnost report that I provided in the binder for you, and this is on the disc.

It is grossly unfair to allow doctors in Ontario, during disciplinary proceedings, to be forced to defend not only their own practice but an entire emerging field of medicine which is in the formative stage. The doctor's expert witnesses are disregarded, good patient outcome is irrelevant and doesn't count, and the doctor-patient relationship is grossly interrupted. What counts and remains on the record is overzealous prosecutorial activity to find you guilty. Much of the process is hidden from public scrutiny.

In a press conference here in Queen's Park on May 10, 2000, criminal and constitutional lawyer Michael Code, now an Ontario judge, reviewed such CPSO discipline cases and stated:

"The documents that I saw showed that college officials took a very severe view of doctors practising in innovative areas ... the overall pattern that emerged was

an alarming one and one that clearly—in the public interest—bears close scrutiny. I would certainly invite the responsible government officials to look closely at whether the college is exercising its powers appropriately; whether this is the kind of Ontario, and the kind of medical climate, and medical community that we would like to live in, whether it is appropriate that doctors are treated in this fashion.... What is remarkable is the absence of harm by what they are doing. I think what they are asking for is that they be treated fairly. What I have seen is that they have not been treated fairly."

I understand that the CPSO has the responsibility to regulate the practice of medicine and to serve and protect the public interest. However, it is absolutely essential that government should have the power to make medical administrative law bodies accountable to the public.

The Chair (Mr. Shafiq Qaadri): You have a minute left.

Mr. Jozef Krop: None of the currently existing supposed safeguards, not the CPSO's own policy on complementary medicine, nor the Kwinter bill, nor the Supreme Court description of the qualities of the "true peers," nor the Ontario Divisional Court judgment in the Brett case, have worked to prevent what so many doctors in Ontario have experienced and what their patients are forced to accept. These safeguards, if written in the RHPA, would also serve to improve patients' access to the health care of their choice.

In summary, I respectfully offer my support of a supervisor for the colleges, because it shows the government's recognition that regulatory bodies must operate more transparently and be held fully accountable to the public. Self-regulation is no less a privilege than is the licence to practise medicine.

The Chair (Mr. Shafiq Qaadri): Thank you, Dr. Krop, for your deputation and the submission that you've left with us. Do Svidanya.

ONTARIO MEDICAL ASSOCIATION–SECTION ON GENERAL AND FAMILY PRACTICE

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter to please come forward: Dr. Bridgeo, chair of the Ontario Medical Association—Section on General and Family Practice, and entourage. Welcome, gentlemen. Please begin.

Dr. David Bridgeo: Good afternoon. My name is Dr. David Bridgeo and it's my privilege to serve as the chair of the Section on General and Family Practice of the Ontario Medical Association. I'd also like to introduce my chair of health policy, Dr. Jan Lusis.

Before I start, I would like to tell you a little bit about our organization. We represent the largest group of physicians within the Ontario Medical Association. Our members include over 9,000 physicians who practise as family and general practitioners, walk-in doctors and focused-practice physicians in various areas, including psychotherapy, orthopaedics, addiction medicine, sports medicine and others.

The goals that Bill 179 might seek to address are laudable: to make more services easier for patients to access and to ensure accountability of health care professions. Our presentation will speak to how well this bill addresses these goals and at what cost. Our concerns are about patient safety, optimization of care and maintaining a culture of care that protects the rights and dignity of both the patients and the providers of that care. We encourage those who craft such legislation to take advantage of the experience of those on the front lines in its provision.

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Dr. Jan Lusis: We think that some of the provisions of Bill 179 do not help the goals that it purports to seek. Why? Let us return to the basics of medical practice.

History; physical examination, including the appropriate ordering and interpretation of tests; the development of a diagnosis and then the creation of a treatment plan are the building blocks of effective patient care. This includes the weighing of multiple pieces and types of information, the development of diagnoses with associated differential diagnoses, which are weighed in and out during the process of information-gathering and test-ordering, whilst communicating with and counselling the patient during the process and after the process.

History, examination, diagnosis, treatment: This is

what we, as family doctors, live by.

History-taking and physical examination: In our understanding, the writing of a prescription or other treatment must include those steps to give optimum treatment to our patients, the citizens of this province. We appreciate the concern of the members of Parliament that more treatments be given more conveniently, but we would like to preserve, in this process, that which is essential to success and safety in treating patients. We are concerned that those who do not have the training or the experience are going to be thrust into what family physicians do, at the expense of patient safety.

History, examination, diagnosis, treatment: All of our training has prepared us to carry out this sequence. We think that those who are to be empowered to prescribe and treat must be equally able and trained to carry this out. We encourage you to consider this with respect to every health provider group that is to be empowered to prescribe under this act. Can they do an appropriate history, including other medical and psychological problems that affect the patient? Can they do an adequate physical examination, including other parts of the body that might be affected or are affecting the area in question? Can they appropriately interpret tests? Can they form an adequate diagnosis, including other conditions that might beset the patient? Will the treatments thus be informed? Will they know what the scope and breadth of the treatments may be?

We appreciate the opportunity to present to this committee. We would have liked to present also to the HPRAC committee, whose proposals preceded this bill.

We have a commitment to good primary care in this province. We think it is appropriate that we be included in any discussions regarding changes in the provision of primary care.

Bill 179 empowers the minister to make further extensive changes by regulation and without parliamentary oversight. We believe that both you, as representatives of the people of Ontario, and we on the front lines of primary care should be consulted about such further changes. We trust that you will provide for this.

The era of independent, self-regulating health care professions is past. Both this bill and previous legislation give the minister increasing power over the various colleges, fee schedules and regulations. Anything can be changed at the minister's discretion. This, of course, gives you, the members of the Legislature, increased direct responsibility for the outcome of the provision of health care in all the ways that it's provided. You will be responsible for the good outcomes and the bad. We trust you will carry out this oversight with suitable industry and vigilance. We recommend the engagement of practising physicians who are independent of the politics of the ministry in the creation of health policy and the legislation to effect this.

Primary care is changing. Care by family doctors is equally or less expensive than care by midwives, pharmacists and nurse practitioners. The ministry finds value in these forms of care despite the lack of any evidence of positive cost benefit. We do argue that the increased expense should buy sufficient expertise to ensure safe treatment for our patients as the area of operation of the various health care providers is expanded.

We, too, have to expand our scope of practice as our consultant colleagues cannot fully cover the needs of our communities. If there is a shortage of family doctors, then get more family doctors, especially comprehensive-care family doctors who can provide the continuity of care that is necessary for optimal health results and who need to function in a supportive and sustainable environment. Fractionating care, as is entertained in this bill, is at best a stop-gap measure and will not lead to comprehensive care.

History, examination, diagnosis and treatment: Can the pharmacists do this? They certainly can do some of it, and we do appreciate the limitations to pharmacists prescribing in this bill. Also, this should be asked of the others who will be taking on prescribing and treatment. But who will ask? With the passage of this bill, these questions will have to be addressed by ministry personnel with more or less clinical knowledge of medical process. We hope it will be more knowledge. We hope that decisions in this area will be carried out in a non-partisan way for non-political ends. We trust that you will ensure this

The provision of health care to the citizens of this province depends on a culture of caring. We, as do other health providers, actively care about our patients. This culture of caring must be fostered and sustained. This bill and its predecessors constrain this culture. How does one

maintain a culture of caring in the presence of draconian measures that attack the rights and dignity of providers? Presuming somebody guilty of misconduct and subjecting that person to penalties before he or she can hear and answer the complaint do not contribute to a favourable climate. Presumption of guilt is not the basis of our laws or tradition. Spying on our colleagues, incrimination by complaint without proof and a requirement to co-operate with a prosecutor do not contribute to an atmosphere of trust and goodwill on which a free society must depend. An adversarial stance toward family doctors will not foster the trust and caring that is essential to our endeavours.

The Chair (Mr. Shafiq Qaadri): Just under a minute left.

Dr. David Bridgeo: We from the Section on General and Family Practice recognize the intent of this bill for taking on the oversight of this very important area, which will affect every citizen of Ontario. We have our paradigm: history, examination, diagnosis and then treatment. We present to you our commitment to optimum primary care for the citizens of Ontario.

We appreciate the opportunity to present to this committee. We think that including the Section on General and Family Practice at an earlier stage would have been helpful to the development of policies and legislation that best serve the citizens of this province. You have our commitment. We trust we will be able to exercise it in this way.

The Chair (Mr. Shafiq Qaadri): Thank you, Drs. Bridgeo and Lusis, for your deputation on behalf of the OMA-Section on General and Family Practice.

COLLEGE OF OPTICIANS OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I would now respectfully like to invite our next presenters, Mr. Fernandes and Ms. MacIsaac-Power of the College of Opticians of Ontario. Welcome, and please begin.

Mr. Jeffrey Fernandes: Good afternoon. My name is Jeffrey Fernandes. I am the president of the College of Opticians of Ontario. I am here with the registrar of the college, Caroline MacIsaac-Power. We would both like to thank you for the opportunity to speak to you today on Bill 179.

The College of Opticians of Ontario is the registering and regulating body for opticians in Ontario. The main function of the COO, as it's known, is to regulate opticians in the public interest. This includes ensuring that anyone who receives a certificate of registration as an optician in Ontario has the skills and training to practise opticianry safely and effectively.

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Opticians provide, fit and adjust contact lenses and eyeglasses as well as a range of subnormal vision devices. They are authorized to perform the controlled act of dispensing subnormal vision devices, contact lenses and eyeglasses on the prescription of an optometrist or a physician. For those who are unaware, subnormal vision

devices assist individuals who have less-than-normal vision even with the most accurate prescriptions. Low vision can be congenital or age-related, such as macular degeneration.

The college maintains among the most rigorous registration requirements in Canada, and Ontario's opticians have enjoyed an excellent track record of providing the highest level of vision care safely and effectively for several decades.

Our 2,500 members complete accredited two-year programs and a minimum of 1,000 hours of dispensing as registered intern opticians before they are allowed to sit for national examination. Only once they pass these exams can they be registered as registered opticians.

The college is encouraged by the government's decision to advance interprofessional care and collaboration and make it the provincial standard. As HPRAC has noted, interprofessional care takes place at the clinical level. It is about teamwork amongst health care professionals from different disciplines providing comprehensive quality care to patients whether in hospitals or within the community.

A significant barrier to collaboration is the lack of knowledge amongst professionals as to the skill sets that other health professionals possess. Encouraging joint continuing education programs within teaching institutes and collaborative care teams comprised of diverse health professionals would not only increase their awareness of other professionals with similar scopes of practice but allow for an environment that encourages the sharing of knowledge, skills and best practices. Interprofessional collaboration, as distinct from interprofessional care, refers to co-operation, not only among practitioners but also among the health regulatory colleges.

In the vision care sector, the College of Opticians of Ontario strongly believes that the public would be best served by a collaborative approach that facilitates seamless services and patient-centred care. Establishing a clear expectation that colleges with common controlled acts would work together to develop common standards of knowledge, skills and judgment will help ensure that their members perform these acts safely and appropriately. To that end, the college continues to work toward mutually beneficial arrangements with its colleagues in the vision care sector to advance such collaboration.

The college aspires to a vision care system in Ontario founded on mutual professional respect and interprofessional equality, as well as increased public access to services. While the bill does not amend the scope of practice for opticians, the college supports the government's decision to expand the authorized acts and scopes of practice of other health care professionals regulated under the RHPA.

The College of Opticians strongly believes that all health professionals should be able to utilize their knowledge and training to their fullest competencies.

Historically, some members of regulated health professions have not fully understood or had the appreciation of other regulated health professionals and their respective roles within the health care system.

As health care delivery evolves, so too must the system and its stakeholders. We all have a role to play in eliminating barriers to collaboration.

In closing, we commend the government for these reforms and would now entertain any questions that you may have.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fernandes. We have about 90 seconds per side, beginning with Ms. Elliott.

Mrs. Christine Elliott: Just to clarify that you are happy with the legislation as drafted and have no suggestions for amendments?

Ms. Caroline MacIsaac-Power: Other than signing on to the federation response regarding the supervisor, we would have no requests for amendments.

The Chair (Mr. Shafiq Qaadri): Madam Gélinas?

M^{me} France Gélinas: I'm good. Thank you. Good presentation.

The Chair (Mr. Shafiq Qaadri): To you, Mr. Balkissoon.

Mr. Bas Balkissoon: You've suggested collaboration but you didn't suggest how we solve the problem where it's not taking place.

Ms. Caroline MacIsaac-Power: We were hoping to look to you for that solution.

Mr. Bas Balkissoon: I'm not in the profession; you are.

Ms. Caroline MacIsaac-Power: Absolutely. It needs to start with working together, absolutely, coming together at the same table and defining some ground rules, how we're going to work together for the patient.

Mr. Bas Balkissoon: Has your association made any initiatives toward that?

Ms. Caroline MacIsaac-Power: Our regulatory college has, for a number of years, initiated discussions and held conversations and has been very clear, I think, in wanting to collaborate.

Mr. Bas Balkissoon: Would you say that this is a role the supervisor can play to help the two parties come together?

Ms. Caroline MacIsaac-Power: No, I would not.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. MacIsaac-Power and Mr. Fernandes, for your deputation on behalf of the College of Opticians of Ontario.

COLLEGE OF DIETITIANS OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I'd now invite Ms. Gignac of the College of Dietitians of Ontario and any colleagues to please come forward. I invite you to please begin now.

Ms. Mary Lou Gignac: My name is Mary Lou Gignac. I appreciate having the opportunity to speak with you on behalf of the College of Dietitians.

The college regulates over 3,000 dietitians. Our regulatory philosophy is prevention. I think that's a theme that you might consider in the consideration of changes to the RHPA.

I'm a bit unique in the regulatory field because I've worked on three sides of the regulatory table. I've worked as the Ministry of Health coordinator of health professions, as the executive coordinator for the Health Professions Regulatory Advisory Council and now as registrar and executive director. I am not a regulated health professional, and it's a bit too late in my life to consider doing that.

The college has two issues it wishes to address: the supervisory powers and the dietetic scope of practice with reference to one particular issue. The college supports the strong and effective accountability of colleges to make sure that they regulate in the public interest—we think that's important—and, in addition, to be seen as regulating in the interest of the public. I note to you the existing 16-point accountability system that was referenced in the Federation of Health Regulatory Colleges of Ontario submission. In addition, I note the additional section 5 powers that the minister has.

I know of no other type of organization that is subject to so many varied external accountability instruments, and I have to ask, "Why more?", because that question has not been answered by the ministry or the minister. Even with all of these accountability instruments, I really believe that government of health professions regulation is not particularly well done.

There are two key reasons. I have more, but I'll stick to two. The ministry and the minister do not have the benefit of key indicators for regulatory effectiveness in the public interest. There is a vacuum there. If the reason for the new supervisory power is to instill public trust, I think we need to look at improved accountability mechanisms, including the basic criteria that make it very clear what the expectations are and what some of the pitfalls to be avoided are.

The other reason I don't think oversight is done particularly well is that ministers in the past have not used section 5 powers effectively. They are there, but ministers have shied away from using them. I ask: If section 5 powers are so rarely used, even for things like making formal inquiries into things, why are we now moving to yet more, and more severe, powers? I think this question has to be answered.

If the objective of the supervisory provisions is to instill public trust, I think we have to be a lot more thoughtful about how we do this. Maybe what needs to be addressed is how to get better accountability with fewer or more effective accountability instruments, including the indicators and the actual processes, because if we want the public to trust what we have, what we're developing is a lot more transparency based on something that gives them the message of effectiveness or not.

Another way to improve is simply to make more and better use of the section 5 powers that are currently in place.

If the media is correct and the supervisory provisions are here to stay, then the CDO, as the federation does, asks you to consider introducing better safeguards right in the RHPA. You have to appreciate that the conse-

quences for an appointment of the supervisor are profound for the individual college, as well as the network of colleges. These effects will last beyond the term of any supervisor. We ask that these safeguards include things like transparency of the criteria and the process used by the minister to fairly judge when a college is not performing well enough.

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The criteria ought to be restricted to public interest. The ministerial authority should relate explicitly and only to public interest. The safeguards should also introduce a transparent process set out in the legislation to cover things like what issues need to be addressed, any attempts or requirements for collaborative resolution, notice periods and the publication of information. This should all be in place and transparent before a supervisor is appointed. Not to introduce such safeguards will subject the college to political expediency. This has actually been the case and challenge of the past.

I would like to ask you to consider one additional point, and that is that colleges really are starting to feel as though they are being treated like transfer payment agencies. Colleges are not transfer payment agencies. That is not the model of profession self-governance that was established with the RHPA. To introduce supervisory powers dealing with operational and financial management clearly confuses the intent of the model of profession self-governance, and any changes to the RHPA should reinforce, not take away from, professional self-governance, with the addition of effective ministerial oversight for public protection and the public interest.

I'd like now to talk about the scope of practice of dietitians. The college, in conjunction with the professional association, Dietitians of Canada, advocates for a change in the Public Hospitals Act regulation to enable dietitians to order nutrition therapy in public hospitals. This is highly complementary with the planned regulation change to enable dietitians to order lab tests to monitor nutrition issues. We were told by the ministry that your recommendation could be very helpful in this regard, even though it doesn't involve the legislation.

Dietitians are the experts in nutrition, especially in clinical nutrition. They receive five years' post-secondary school education, including one year of an internship, a lot of this taking place in public hospitals. The scope-of-practice reviews were motivated in part by a desire to ensure that legislation and regulation does not impede interprofessional collaboration. Interprofessional collaboration is a valued way to improve client care.

Our written submission shows that the requirement to chase the orders, chase the signatures, interferes with collaboration in many ways. It confuses authority with collaboration, two very different concepts. It confuses who has authority with who has the expertise. It steals time away from meaningful collaboration, like dialoguing. It leads to workarounds that, as a registrar of a college, I am particularly concerned about. We have orders that say, "Diet per RD." That's fine. But we also have orders like, "Diet is tolerated." I'm not sure what that means and I'm

the registrar of the college. We also have orders that say "RD to see," where in fact—

The Chair (Mr. Shafiq Qaadri): You've got a minute left, Ms. Gignac.

Ms. Mary Lou Gignac: Thanks. Our research shows that this requirement is simply not needed. Recommended orders from dietitians are followed without question. We need to create the time and the mechanisms for real collaboration.

I welcome your consideration of this request. RDs do collaborate and are really trying to create more time to do it more and to do it more effectively, and this is in the way. Thank you for you consideration.

The Chair (Mr. Shafiq Qaadri): Thank you. You have time for pleasantries. Ms. Gélinas.

M^{me} France Gélinas: The change that you want is a change that we need to happen in the hospitals act, is it not?

The Chair (Mr. Shafiq Qaadri): Time is now expired, Madame Gélinas. To the government side.

Ms. Mary Lou Gignac: Regulation under the Public Hospitals Act.

Mr. Bas Balkissoon: Thank you very much for your presentation.

The Chair (Mr. Shafiq Qaadri): Ms. Elliott.

Mrs. Christine Elliott: Thank you very much. It makes perfect sense to me.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Gignac, for your deputation on behalf of the dietitians of Ontario.

ENVIRONMENTAL HEALTH ASSOCIATION OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter, Ms. Grist of the Environmental Health Association of Ontario, to please come forward. I'd invite you to please begin now.

Ms. Lin Grist: If you don't mind, I'd like to get a glass of water first. It's quite dry in here.

Good afternoon, ladies and gentlemen. Thank you for giving me the time to present to you.

Let's start from the beginning. My name is Lin Grist and I am a board member of the Environmental Health Association of Ontario. The EHAO has been in business for some 20 years. We are, of course, not-for-profit, and we are a member organization with our headquarters in Ottawa, Ontario.

EHAO works with and for people who have multiple chemical sensitivities. You may also know this condition as environmental sensitivities, although in the health care systems across the European Union, in the USA, in Japan and in the World Health Organization, the condition is known as multiple chemical sensitivities. It is a disease of toxic injury, and people with this debilitating and chronic condition are highly sensitive to the many chemicals that we are all exposed to in the course of our everyday lives.

I do not have MCS, which is why I am able to speak with you today in this room without fear of a chemical exposure. This is why those with this condition are often called the "invisible cripples." If you are unable to engage in public life by going into public buildings, shopping malls, shops, government buildings—including hospitals—health clinics and doctors' offices because they contain an array of chemicals to which you are highly sensitive, it is difficult to inform, educate or advocate for necessary services on your own behalf. It is also why there is so little public knowledge of this condition.

The EHAO has read the submissions of the Ontario Society of Physicians for Complementary Medicine and that of the Lyme Action Group and supports the principles outlined in their submissions. People with multiple chemical sensitivities may also be afflicted with Lyme disease. Their compromised immune, endocrine and nervous systems make it much more difficult to fight

such opportunistic bacterial infections.

The EHAO approaches this issue from the lens of the patient, and our focus today is to provide input into the discussion of Bill 179 and what we are concerned might be the unintended consequences of some aspects of the bill. Our goal, like yours, is to ensure that this legislation and related regulation support the necessary medical care of all Ontarians served by our publicly funded health care system. In particular, we are apprehensive that this bill will inadvertently interfere with the delivery of medically necessary services to patients with multiple chemical sensitivities.

As you may be aware, the condition of multiple chemical sensitivities has been labelled the disease of the 21st century, in part because of the plethora of new chemicals which have been developed and become an integral part of our daily lives since the 1950s. While the development of these thousands of new chemicals was designed to be benign, there has been a growing awareness among health care professionals and government agencies at all levels of the toxicity to humans and other life forms of some of these chemicals and the concomitant need for a more measured approach to the use of chemicals.

Our own provincial government has led the way in this area with the Toxics Use Reduction Act, 2009. Our publicly funded health units across the province have adopted the precautionary principle with regard to the use of chemicals in order to protect public health in the areas of air quality and illnesses related to chemical emissions.

We applaud the provincial government's position to identify health human resources requirements to increase patient access, improve chronic disease management and meet new emerging health care needs by better utilizing regulated health professionals and reducing barriers to their practice. Increasing patient access to appropriate medical care, improving chronic disease management and meeting new emerging health care needs is at the heart of the work that EHAO has been involved with over the past 20 years at both the federal and provincial levels of government.

Our concern, as I mentioned earlier in this brief, centres around what we believe to be an unintended consequence of a desire on the part of the provincial government and the Ontario College of Physicians and Surgeons to ensure the provision of high-quality, peer-evaluated medical services to all Ontarians.

Our practical suggestions to ensure that these unintended consequences do not compromise the current level of care and the evolving practices of those physicians with the body of knowledge and expertise to treat people with multiple chemical sensitivities are—and I refer you to page 2 of our submission.

I should tell you that I'm not a lawyer, and I am enormously grateful for the pro bono legal counsel that actually translated legal language into something that was accessible to me. So I am going to give you an overview but I'm not going to go through the details because I'm sure, members of the panel, you know it much better than I do.

Evolving practices and peer evaluation: We propose that the concepts of evolving practices and peer evaluation be enshrined in all areas of regulatory colleges' assessment and investigation processes in accordance with the objective that health professions legislation be fair and also be seen to be fair.

I refer you to page 3 of our submission. Quality assurance impacts: Plans are in place to increase assessments in the College of Physicians and Surgeons of Ontario quality assurance program—peer assessment, practice assessment, physician review program and specialties assessment program. If a physician using a complementary or innovative method is assessed by someone who does not have the relevant expertise, there is considerable risk of being judged to have deficient clinical ability. A health professional must comply with a quality assurance assessor and committee. The quality assurance committee can order remedial education or impose terms and conditions on the member's certificate of registration. I would suggest that you look at this particular section, learned members of the committee, with great care.

I refer you to page 3 of our submission, "Procedural safeguards," and again to what we believe to be the unintended consequences of Bill 179 that concern us.

I would stress that what matters most to Ontarians—and I'm talking now as a member of the public who actually uses health care services and of an organization that works with people who use those publicly funded services—are positive outcomes of health care intervention. Hence, the object for health care legislation to be considered first must be "the well-being of the patient," and I quote the Canadian Medical Association code of ethics, 2004.

Ontario's few environmental physicians are a very precious resource to the group of people that I work with. They have done further training in new medical modalities, some of which have been labelled "complementary." They have joined OSPCM and the OMA complementary medicine section to interact collegially with other innovative physicians as physicians who use

innovative and complementary techniques and modalities. But their special knowledge of how to help the chemically sensitive is rare in this province, and I would say to you, ladies and gentlemen, that it is irreplaceable.

The Environmental Health Association of Ontario therefore urges this standing committee to consider both our concerns and our recommendations for amendments prior to presenting its deliberations and recommendations to the Ontario Legislature on this important piece of legislation. Thank you for your time.

The Chair (Mr. Shafiq Qaadri): We have about 20 seconds a side. Mr. Balkissoon.

Mr. Bas Balkissoon: Thank you very much for your presentation.

The Chair (Mr. Shafiq Qaadri): Ms. Elliott.

Mrs. Christine Elliott: Thank you as well from us.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas.

M^{me} France Gélinas: I think I'm learning. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Grist, for your deputation on behalf of the Environmental Health Association of Ontario.

ONTARIO ASSOCIATION OF CONSULTANTS, COUNSELLORS, PSYCHOMETRISTS AND PSYCHOTHERAPISTS

The Chair (Mr. Shafiq Qaadri): I would now invite Ms. Siddiqui and Mr. Marai of the Ontario Association of Consultants, Counsellors, Psychometrists and Psychotherapists. Welcome. Please be seated. I'd invite you to please begin now.

Ms. Naseema Siddiqui: Good afternoon, Mr. Chairman and members of the standing committee. My name is Naseema Siddiqui, and I'm president of the Ontario Association of Consultants, Counsellors, Psychometrists and Psychotherapists. With me is my colleague and chair of the OACCPP board of directors, Mr. John Marai. OACCPP is the affectionate name used by our colleagues and members of the OACCPP.

The Ontario Association of Consultants, Counsellors, Psychometrists and Psychotherapists, as the name indicates, is an umbrella organization which represents approximately 1,800 psychotherapists and counsellors and other mental health service providers in this province. We are an incorporated, self-regulating professional association formed in 1978 to represent providers of mental health services. OACCPP has been advocating for the statutory regulation of mental health professionals for many years. We have been very supportive of the Psychotherapy Act of 2007 and welcome the opportunity to speak to this committee regarding the Regulated Health Professions Statute Law Amendment Act, 2009; that is, Bill 179. Most specifically, we will be addressing the amendment pertaining to the Psychotherapy Act of 2007.

OACCPP has previously supported the principle that members of the regulatory colleges who already have access to the controlled act of psychotherapy should not have to undergo dual registration in order to continue to provide psychotherapy services and to access the controlled act of psychotherapy. Additionally, we support that such members could also have access to the title of "psychotherapist" when used in conjunction with their college affiliation, as described in the proposed amendment to Bill 179.

OACCPP supports the proposed title revision to the original Psychotherapy Act to include the new title "registered psychotherapist" as this construction is consistent with "registered mental health therapist," a consistency which helps the public identify members of the new College of Psychotherapists and Registered Mental Health Therapists. We feel that this title clarification and distinction is extremely important for public information and education. So we are supporting many of the amendments. However, this is in principle. OACCPP supports most of the amendments, but we require some further clarification, and I will ask my colleague, John Marai, to speak to those clarifications.

Mr. John Marai: As indicated, we strongly suggest that the full title "registered psychotherapist" be incorporated in the title of the new college, thus changing it to the College of Registered Psychotherapists and Mental Health Therapists of Ontario. This again provides the public with a clearer distinction between the members of the new college and other regulated professionals providing psychotherapy services in discipline-specific domains.

We draw your attention to an important fact that no other regulated college shares the protected titles of their members with other colleges. For example, physicians do not share their title with nurses. We at OACCPP feel that adding the term "registered" both to the title of the college and the title of psychotherapist helps afford members of the new college access to their own exclusive title, which will be protected under the regulatory status of the new college. This would again add further clarification to the public.

OACCPP would also like you to review the holdingout clause. Many members of OACCPP hold a master's degree in psychology. We feel it is imperative that the Psychology Act should include a new provision, namely, that members of the College of Registered Psychotherapists and Mental Health Therapists be able to identify the discipline leading to the degree that they have legally earned.

With respect to members of the new college, we ask that restrictions cited below not be considered a contravention to the Psychology Act, 1991, subsections 8(2) and (3). In other words, we ask that members of the new college holding a master's degree in psychology be given the right to indicate their field of training to their clients, the public and other mental health professionals. We feel strongly that prohibiting such communication of a

truthful fact to the client is not in the best interests of the client. Since the primary intent of the Regulated Health Professions Act is to protect the public, how would this

prohibition protect the public?

I made some references to the restrictions, and I will share them with you. Subsection 8(2) states, "No person other than a member shall hold himself or herself out as a person who is qualified to practise in Ontario as a psychologist or psychological associate or in a specialty of psychology." Subsection 8(3) states, "A person who is not a member contravenes subsection (2) if he or she uses the word 'psychology' or 'psychological,' an abbreviation or an equivalent in another language in any title or designation or in any description of services offered or provided."

In conclusion, again, on behalf of the Ontario Association of Consultants, Counsellors, Psychometrists and Psychotherapists, we would like to thank the committee for the opportunity to present our concerns and issues for

your consideration.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marai. A minute per side, beginning with Ms. Elliott.

Mrs. Christine Elliott: No questions. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas?

M^{me} France Gélinas: I think your request is reasonable, clear and easy to understand.

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon?
Mr. Bas Balkissoon: I have no questions. Thank you

very much for your presentation.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Siddiqui and Mr. Marai, for your deputation on behalf of the Ontario Association of Consultants, Counsellors, Psychometrists and Psychotherapists.

BEST MEDICINES COALITION

The Chair (Mr. Shafiq Qaadri): I'd now invite Ms. Binder and Ms. Eddy to please come forward on behalf of the Best Medicines Coalition. I would invite you to

please be seated and begin.

Ms. Louise Binder: Good afternoon. Thank you very much for the opportunity for the Best Medicines Coalition and the Canadian Treatment Action Council to present to you today. My name is Louise Binder. Just as background, I am an HIV-positive woman, probably infected more than 20 years ago. So I've had a very long, intense history with the medical profession and all of the other related health care professions. I have with me Paulette Eddy, who's the executive director of the Best Medicines Coalition.

Our two organizations are both national, non-governmental organizations. The former—that's the Best Medicines Coalition—represents numerous patient groups across the country of different disabilities and diseases, while the Canadian Treatment Action Council represents primarily people with HIV/AIDS and people co-infected with hepatitis and HIV as well. Both share a commitment to ensuring safe and timely access to evidence-based

medicines for people in Canada. They are both funded by governments, both provincial and federal, the pharmaceutical industry and the members of the organizations.

We have analyzed Bill 179, and there are two areas that we would like to discuss with you today for a few moments. First I'd like to say that in general, in principle, both of our organizations very strongly support the appropriate full use of all health care professionals to the fullest of their training and skills, but we submit that all regulatory frameworks that define the scope of practice and in this case, I'm speaking of pharmacists-must clearly outline the process and collaborative interface that those pharmacists will have within a health care team, specifically with the physicians who are treating their patients, including family doctors and specialists. In fact, ideally, the pharmacist is part of an interdisciplinary health team, thereby ensuring that pharmacists' decisions are known to the doctor and to the other members of the health care team who are treating. Unfortunately, in our view, the way Bill 179 is presently worded doesn't offer this protection to patients.

In addition, pharmacists who are prescribing should only do so where it is acceptable for patient safety. In our view, that's in limited cases and where the goal is to address immediate patient needs and to improve treatment outcomes for previously diagnosed conditions.

Pharmacists should not be permitted, in our view, to order tests, to interpret results or to diagnose ailments unilaterally, as this is not part of their training and skill sets, and there is nothing in this legislation to explain to us how they are going to be trained such that they would be able to do so. Only in limited cases, where there is strong justification, should pharmacists be involved in changing or adjusting medications. In those cases, any pharmacist's adjustment regarding dosing or formulation should be accompanied by patient consent and immediate notification to the physician or physicians caring for the patient.

Best Medicines Coalition and CTAC recognize that Ontario faces huge human resource challenges, and, as I say, we strongly believe that health care professionals should certainly be pursued to take advantage of the full range of their skills and knowledge. We are concerned, however, that there is so little outlined in this legislation about the limits of pharmacists' powers to prescribe and so much left to regulation, which is not required to come before the Legislature, that we really have no clear idea of what the pharmacists are going to be permitted to do or the training they're going to receive. In our submission, the legislators have left so much in for these regulations and out of this legislation that there will definitely be a possibility for court challenge, that we have not in fact retained our jurisdiction as legislators in matters of substance and that we have left matters of substance to the regulations, which are only supposed to provide process and form but not substantive legal provisions.

Specifically, if we look at subsection 21(2), this act defines what types of drugs the pharmacist can prescribe

and it really should define, but does not, what drugs the pharmacist should prescribe. It should also state clearly what injections the pharmacist can administer and what types of inhalations can be administered. What procedures are the regulations going to require for the pharmacist to do this prescribing? These procedures are not at all clear. An error in prescribing a drug or administering an injection or inhalant can be life-threatening for a patient. Thus, the act itself should outline specifically the "what" and the "how" of such prescribing and not leave it for the regulations, which do not undergo the same scrutiny as legislation and which can indeed be amended much more easily. This is a great worry to our communities.

In our submission, the act is so lacking in definition of which ailments or types of ailments should be included as part of broader pharmacists' prescribing powers, it's so lacking in explaining the skills that will be provided to the pharmacists and training that the pharmacists will be required to have, as to be unworkable. Details about mandated communications between the pharmacists and the primary care physicians are lacking, details about levels of authority within a health care team are lacking, and clarity on patient confidentiality and privacy issues, which I can assure you in our communities are profound, is also lacking.

1700

Our organizations support the role of pharmacists as patient educators and counsellors and in having limited prescribing powers—for instance, to permit someone a few pills or some sort of medication until their doctor can be reached—but they do not support the authority of pharmacists to be involved independently in medication therapy management, even in smoking cessation or in travel prophylaxis drugs. The concerns that arise in these situations relate to the possibility of anaphylactic or other serious reactions in an environment where equipment to deal with them is not available.

Another profoundly important issue is the relationship of compensation for community pharmacists. There are numerous conflict-of-interest issues that arise when a pharmacist is also running a business from which revenue from prescriptions is a part of their business, rather than those who work in a health team setting—it's critical that all health professionals in an environment work in an environment of integrity, transparency and public trust, which I must say is frankly quite lacking for us in a lot of the large pharmacies where there's business being done.

Before expanding the scope of practice, those issues must be resolved completely. This should be done not only in tandem with, but also integrated with the work presently being undertaken by the Ontario Ministry of Health and Long-Term Care to consult on—

The Chair (Mr. Shafiq Qaadri): Just under a minute, Ms. Binder.

Ms. Louise Binder: Sorry?

The Chair (Mr. Shafiq Qaadri): Just under one minute left.

Ms. Louise Binder: Oh, thank you. And review—so to work with them on this.

The last point I would like to make is about the decision to appoint a supervisor of a college. We're sure that there are egregious situations in which this is the thing to do, but we would suggest an addition as well. We're now dealing with a situation with the Ontario College of Physicians and Surgeons where they are mandating mandatory HIV and hepatitis testing for their doctors who are doing certain types of surgery. This has been found by lawyers to be contrary to the Charter of Rights and Freedoms and it also limits the rights of patients and doctors to do their work. So what we would propose to you is, in addition to your legislation, to provide some sort of objective adviser to the ministry so that if a complaint comes in about a particular rule or regulation, there can be an objective—

The Chair (Mr. Shafiq Qaadri): I'll need to intervene there, Ms. Binder. I'd like to thank you and Ms. Eddy for your deputation and written materials on behalf of the Best Medicines Coalition.

COALITION OF FAMILY PHYSICIANS OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I would now like to invite, on behalf of the committee, our next presenter of the afternoon, and that is Dr. Doug Mark of the Coalition of Family Physicians of Ontario, and any colleagues he may have. Welcome, gentlemen. I invite you to please be seated and please begin.

Dr. Douglas Mark: Thank you, Mr. Qaadri, for this opportunity to appear before you today at the committee. My name is Dr. Douglas Mark, and it's my privilege to serve as the president of the Coalition of Family Physicians of Ontario. Founded in July 1996, the coalition is a voluntary, member-driven, grassroots organization representing over 3,000 family physicians. It is dedicated to protecting the rights and independence of family physicians across the province. We advocate, on behalf of our patients and members, solutions to improve health care delivery to the people of Ontario.

Joining me today is board member Dr. Felix Klajner, who will present our main concerns today. Dr. Klajner?

Dr. Felix Klajner: Thank you, Dr. Mark, and thank you for this opportunity to address you. What I'd like to do first is to give you a brief backgrounder—our view of it—which led up to Bill 179. I'm beginning to see that a lot of our concerns are being echoed by other people as well, so obviously there's some consensus.

Virtually no decision involving one area of health care can be made without affecting some other area, either within or beyond the health care system. For this reason, very thorough and thoughtful research and decision-making is required.

What is the past? In the early 1990s there were significant reductions to medical training positions in Ontario, following the recommendations of the Barer-Stoddart report at that time, which was viewed as state-of-the-art knowledge. Ontario, and in fact all of Canada, are still feeling the effects of this ill-fated decision as our health

care system struggles to provide access to patients in the face of severe shortages of physicians as well as nurses and other health care professionals and resources. Now, almost 20 years later, Ontario has made significant increases in medical training positions in a sharp but commendable reversal of previous government policy. However, large gaps still remain, especially access to primary care physicians, specialists and diagnostic testing, not to mention certain cancer medications.

Although industrialized Ontario experienced favourable economic conditions during a good part of the time, the present worldwide decline is likely to profoundly affect Ontario in the foreseeable future—it's not going to go away quickly. The Coalition of Family Physicians of Ontario fully understands the importance of using human health resources in the most effective and cost-efficient manner. However, Bill 179 has several provisions that are of major concern to us. Three major areas:

(1) The actual increased costs associated with increased scopes of practice of many providers are not really known. However, what is known is that increasing scopes of practice and the resulting increased access and usage of resources will definitely involve a significant cost—not how much, but it definitely will. Cost containment was the major reason that physician numbers were sharply curtailed in the past. The previously created shortage of physicians is now leading to expand the scopes of practice of other health care providers, but is likely to increase costs again. The coalition is concerned that expanding the scopes of other providers is not a solution, but rather a desperate stop-gap measure to address the effects of previous decisions regarding physician numbers, and now it will bring on further problems of its own. Rather than simply expanding scopes of practice, a much more detailed study of our human health resources is needed before haphazardly proceeding.

(2) Ontario is significantly lagging behind other provinces in the adoption of electronic medical records and health information technology, and only a minority of physicians and other providers have managed to incorporate such technology into their practice. The present \$1-billion eHealth Ontario fiasco will now only further exacerbate this problem. Merely expanding the scopes of practice of other providers to order imaging or other laboratory investigations without providing the ability to share these electronically, or in other words to engage in real-time collaboration, has the troubling potential to lead to significantly increased duplication of services and expenses. Expanding scopes of practice before having widespread modern information-sharing tools for providers appears to be like putting the cart before the horse.

(3) Expanding the scope of practice of other providers as a response to physician shortages may be seen by some as necessary at this time. However, patient safety must always remain paramount, and mechanisms must first be put in place to evaluate the effects of such a move in order to ensure that the resulting care is safe, effective and appropriate. Indeed, this is the coalition's most important area of concern with the proposed legislation.

Physicians clearly receive the most intensive and lengthy education of any health care provider concerning diagnosis and treatment. Is such training really necessary? We believe that it is, and this is underscored by the present trend in family medicine to an even lengthier education as medical knowledge advances. Moreover, even seemingly simple things are often not so simple. There are many examples that come to mind. Here are some of them.

If pharmacists renew an antibiotic, asthma medication or blood pressure medication, are they trained to evaluate whether the drug is in fact effective or whether it has notable side effects for the patient? Such evaluation is critical, requires a thorough medical knowledge base and, if not performed, can lead to disastrous consequences. Should we then train pharmacists in diagnosis, record-keeping and treatment? If so, for how long? Should they be allowed to diagnose and treat without such training? Should they be compelled to carry malpractice insurance? These are all unanswered questions. In Alberta, where pharmacists can now apply for prescribing rights, pharmacists themselves recognize their own limitations and very few have actually applied for these rights.

Moreover, physicians are not allowed to dispense medications that they prescribe, due to an obvious conflict of interest. It puzzles us why this same conflict of interest should now become acceptable for pharmacists and for nurse practitioners. Is it because they, unlike physicians, would ostensibly not be paid an explicit OHIP fee for the prescribing process? If so, then this extension of the scope of their practice might cynically be seen by some as saving costs at the expense of patient welfare.

The diagnosis and setting of a broken bone by a nurse practitioner acting independently without physician supervision is another potential pitfall. Orthopaedic surgeons have among the highest rates of malpractice suits, many coming from the treatment of fractures, a seemingly simple procedure. Although we acknowledge that remote locations could require a nurse acting relatively independently out of sheer necessity, modern telecommunication with a supervising physician should and must be used, but as we've pointed out earlier, Ontario suffers from a chronic lack of such information technology.

While Ontario works towards improving access to the health care system and patient outcome and satisfaction, patient safety and treatment effectiveness must remain the paramount concerns. There is admittedly much to be done in the realm of collaborative care among different health care providers, and the coalition supports such collaborative initiatives. However, we do not support attempts to fill gaps in physician numbers by turning to providers who may not be qualified for the job. This can only compromise patient safety and outcomes and increase the costs, thus compromising the very sustainability of our medical system. We urge the government of Ontario to slow down and study the issues carefully

before launching measures which may actually make matters worse, just as adopting the Barer-Stoddart report on physician numbers was in the 1990s.

Finally, we urge the government to consult with physicians, rather than acting unilaterally, even to the point of giving itself the power to take over any regulated health care college that does not abide by government policy. This is presently set out in Bill 179. The concept of collaboration cannot be limited to among various health care professions but must also extend to government if it is to have any real meaning. Doing so simply invites further errors and virtually assures compromising our health care system further.

The Chair (Mr. Shafiq Qaadri): Thank you, gentlemen. We have about 20 seconds per side. Mr. Balkissoon.

Mr. Bas Balkissoon: Thank you very much for coming forward and making your presentation.

The Chair (Mr. Shafiq Qaadri): Ms. Elliott.

Mrs. Christine Elliott: You've raised an important point with respect to the expanded scopes of practice. I completely agree with you that until we get our electronic health records up and going, we're not going to be achieving any savings.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas.

M^{me} France Gélinas: Thank you for your presentation, and I would have a question about your view of the supervisor, but I know I won't have time. Try, if you speak really fast.

Dr. Felix Klajner: The supervisor?

M^{me} France Gélinas: Yes. You said "to consult with physicians rather than acting unilaterally"—

Le Président (M. Shafiq Qaadri): C'est tout, Madame Gélinas. Ce n'est pas possible.

M^{me} France Gélinas: Why do I bother?

The Chair (Mr. Shafiq Qaadri): Thank you, Dr. Klajner and Dr. Mark, for your deputation on behalf of the Coalition of Family Physicians of Ontario.

GRASSROOTS OPTOMETRISTS

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter, Mr. Miller of the Grassroots Optometrists, to please come forward. Welcome, and please be seated. Please begin.

Dr. Gregory Miller: I'm Dr. Miller. I'm an optometrist in private practice in Toronto, a member of this organization and also the Ontario independent optometrists.

I have one basic concern with a change that has happened since our profession actually saw the original legislation, of which we were not given any opportunity to respond.

The first draft of the designated drugs regulation that was submitted identified categories of drugs that were to be prescribed by optometrists. The college of optometrists has now notified us that lists of drugs are to be identified rather than categories of drugs to be prescribed by optometrists. An expert committee is then to be

established in order that new drugs be added to the list of drugs that are already okayed by Health Canada as being safe and effective.

As I said, the profession was not given an opportunity to respond to this change, which was, we felt, unusual. One can only assume that somebody was convinced that the change would in some way add some kind of protection to the public. The new drugs that would fall in the original categories will have already been scrutinized by Health Canada and offered to the public as both safe and effective.

The college of optometrists has been mandated by statute to regulate the self-regulating profession in order to protect the public interest. The college has done so for many years in an exemplary fashion. There is no reason to change the self-regulation of the profession now. In fact, the creation of the suggested expert committee would be costly in terms of man-hours and, of course, public dollars. The committee would be redundant, costly and will not add any further protection to the public that the profession of optometry serves.

There would, however, be negative consequences if this change were to remain in Bill 179. The list of designated drugs provided is already outdated and incomplete as I speak to you now. This would be compounded as new drugs become available, due to the long time frame involved with getting committee approval, a committee that has not been established yet. I have already spoken to the added costs of a redundant process of approval by committee.

The delay would force a compromise in patient care. The optometrist would be forced to use older drugs for treatment that would be less effective and possibly have more side effects and not as good a safety profile. Also, newer drugs have better dosage schedules, which improve patient compliance, and therefore the treatment is more effective.

I'll digress for a second from what I gave you, just to give you two quick examples.

There's a drug available right now called AzaSite, and it's azithromycin. It has a dosing schedule for conjunctivitis, a bacterial infection, of one drop twice a day for two days, one drop for the next five days and that's it. On the other hand, if you had to use one of the drops on the list, and a mother or father had to give a six-year-old drops—say, ocufloxacin—for that same condition, it would be four times a day for seven to 10 days, struggling with a six-year-old. I would much rather, as a parent, give one drop twice a day for two days, and then one drop a day for five days. It doesn't make sense to put patients through that.

There's a new drug just being released by the FDA in the States and given approval called besifloxacin, a sister drug to the other ones on the list. The only difference is it has a couple of chlorine atoms added to it. It has a better safety profile because it has never been used for other conditions, whereas all these other drugs have been used for respiratory infections, ear infections and what have you. This is a drug specifically designed for use in the eye; therefore it has a better safety profile. It hasn't got the resistance that is showing up more and more in our populations and therefore would be much more effective. It also will replace some drugs that have already gained resistance, and those would not be available to our patients.

So in an urban centre like Toronto, I could refer the patient. It would be a lengthy thing; it would be costly for the government and would delay treatment for that patient. What about a rural setting, where the optometrist is the only vision care provider in that setting? This patient does not get the drug they need, period, and that's the end of it.

There is growing bacterial resistance to some of the drugs on the present list, and this has been stated over and over. And if this situation is encountered, the optometrist in the optometrist's office—there would be no other way to delay or not to provide the care. The delay or denial of the best drug available in the optometrist's office would create a two-tier vision system. You want the best drugs, you go to optometry. I don't think that's what the government had in mind when they decided to have us practise in this area and expand our area.

Then there is the question of who will sit on the expert committee. If representatives from medicine sit on that committee, their political agenda will be injected into what should be a professional, educated, science-based

decision made in the optometrist's office.

Of note: In their reasons for going forward with the treatment of glaucoma by optometrists, the HPRAC committee told of their disappointment in seeing the despair of optometric representatives due to the fact that two years after being asked by the committee, there was still no co-operation from ophthalmology with optometry on the treatment of glaucoma. This situation must not be repeated over and over with each new drug that Health Canada makes available in the designated categories.

The stated goals of the ministry—universal access in a timely manner—will not be served by this change to lists rather than categories of drugs.

I leave time for your questions.

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The Chair (Mr. Shafiq Qaadri): Thank you. There's about a minute per side, Dr. Miller, beginning with Ms. Elliott.

Mrs. Christine Elliott: No questions. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas?

M^{me} France Gélinas: Your ask is simple: You want it to be categories of drugs rather than a drug list.

Dr. Gregory Miller: Exactly, as the original recommendation was. We don't know what happened in the meantime. We weren't given a chance to know why.

M^{me} France Gélinas: Okay, thank you.

The Chair (Mr. Shafiq Qaadri): To the government side: Monsieur Lalonde.

Mr. Jean-Marc Lalonde: Thank you very much for your presentation. You refer to the new drugs available

for patients. I'm sure that you know the procedure before they are approved to be distributed or recommended by OHIP procedures.

Dr. Gregory Miller: I'm sorry? I couldn't-

Mr. Jean-Marc Lalonde: You referred to new drugs available and that we still have the old drugs.

Dr. Gregory Miller: Yes. New drugs become available mostly.

Mr. Jean-Marc Lalonde: I'm sure you know the procedure to follow before doctors or optometrists—

Dr. Gregory Miller: Oh, of course. This is part of our education. First of all, Health Canada rules that they are safe and effective in those categories—the same categories, and we wouldn't get them outside the categories. Our college makes sure that our education is up to date, and that's mandated by statute.

Mr. Jean-Marc Lalonde: Because Ontario will only approve them whenever they're approved by Health Canada—

Dr. Gregory Miller: Yes, that's right. Exactly. Health Canada will have approved them.

The Chair (Mr. Shafiq Qaadri): Merci, Monsieur Lalonde, and thanks to you, Dr. Miller, for your deputation on behalf of Grassroots Optometrists.

PEDIATRICIANS ALLIANCE OF ONTARIO AND ONTARIO MEDICINE ASSOCIATION-PEDIATRICS SECTION

The Chair (Mr. Shafiq Qaadri): I would now invite Dr. Yamashiro of the Pediatricians Alliance of Ontario and the Ontario Medicine Association—Pediatrics section to please come forward. Welcome and please begin.

Dr. Hirotaka Yamashiro: My name is Dr. Hirotaka Yamashiro. I'm representing the pediatricians of this province. First of all, hopefully to the relief of the committee, I don't plan to take all 10 minutes with my presentation. At the end of a long day, it might be a bit of a relief to you. We do come to you with some comments and concerns about this bill.

First of all, a little bit about who we are: We represent the pediatricians of Ontario. The Pediatricians Alliance of Ontario is a partner organization of the Section on Pediatrics with the Ontario Medical Association. We work together to represent all pediatricians in this province. We now number 1,200 strong in this province, of whom about 400 are based in the community. As most of you know—and if you didn't know—pediatricians are medical specialists with four to seven years of training after medical school, looking after the health and welfare of children, infants and youth in all aspects as necessary.

We would like to thank you for this opportunity. You've probably heard many presentations from many different medical groups. We realize and we've been privy to the main submission by the Ontario Medical Association, and as part of the discussion for that, we certainly would like to highlight that we agree with many of the points made. Interestingly enough, my colleagues from family medicine, who went before me, have made

some very important points as well. But the pediatricians would like the committee to really be aware of one key concern, and again, it revolves around the wording of what is proposed for independent prescribing by pharmacists.

Altering and renewing existing prescriptions certainly sounds like a very simple and straightforward item. However, as the committee is likely aware, infants and children are very unique in many ways, one of which is that they're growing on a daily, weekly and monthly basis. If they were having any chronic illnesses or were on any medications on a long-term basis, the extension of needed prescriptions of course is important, but on top of the changing per-kilogram body weight dosages or, at times, our calculation called for body surface area doses that are needed on an ongoing basis—at certain times, certainly; maybe not at every prescription change—the committee should be aware that, depending on the medical condition, a review is usually needed by a physician in what would be termed a medical history and/or physical examination.

What we would be looking for is, obviously, somebody who has an awareness of why the medication has been prescribed, what the purpose is, what side effects could be possible, what physiological changes may have occurred and many other factors that not only need to be reviewed, but probably documented before any prescription is renewed.

Now, it could be argued that many prescriptions, at the end of the day, even after such a review, would not change substantially. But as an example, smaller infants with chronic medical issues such as vesicoureteral reflux—in layman's terms, that's where urine is refluxing from the bladder back to the kidney, which is a common problem that some babies are born with—congenital cardiac disease and many other chronic illnesses, if the legislation were not to specify the oversight that is critical and oftentimes needed, it would put patients unnecessarily at risk for significant morbidity and/or mortality. So certainly, we think, just from that standpoint, we want the committee to be aware that having physician oversight is quite important.

By contrast, we understand that the concept of interprofessional care, having been on committees with the OMA looking at the issue of interprofessional care, is certainly maximizing the scope of practice so that patient care is better served by everybody in the health care system. It is a noble concept that definitely should be pursued. However, it should always be in a collaborative manner. In context, we'd like to point to the hospital setting, where pharmacists function in a team model with physician oversight. It's a team decision, and responsibilities for everything are shared. Independent altering of prescriptions in a community setting, as this bill may allow in the current or in future forms, would certainly fly against this team model. Again, I come back to the fact that it would be detrimental to patient care, especially for children, infants and youth in this province.

So we do have a suggestion at the end of our submission that, because of the uniqueness of the pediatric population, which is often overlooked—a lot of people tend to lump children and infants in with everybody else in the health care system—that the committee strongly considers something to reflect that in the final legislation. The pediatricians of this province would certainly appreciate it if you were able to do that.

The Chair (Mr. Shafiq Qaadri): Thank you, Dr. Yamashiro. About 90 seconds per side; Ms. Gélinas.

M^{me} France Gélinas: You've talked about collaborative care between pediatricians and pharmacists in hospitals. In the community, are you aware of any collaboration happening between the two professions?

Dr. Hirotaka Yamashiro: That's an excellent question, because unfortunately there isn't any formal mechanism. I believe that in a smaller community everybody gets to know everybody else within the medical and ancillary health care models, but unlike family medicine, where you have specified team models with a specified structure, pediatricians do not have a formal mechanism of communicating with pharmacists. When you think about the potential repercussions of medication errors and the importance of two-way communication, we would like to see something along that line. It's probably a discussion for a separate forum, but that's an excellent question, absolutely.

The Chair (Mr. Shafiq Qaadri): Ms. Mitchell?

Mrs. Carol Mitchell: Thank you very much for your presentation. I wanted to give you the opportunity to talk about where your model works well in a hospital setting, with the understanding that it's expansion of their roles within health care—be it a pharmacist, be it a nurse practitioner, whatever. I wanted you to give me an example, in a hospital setting, where a pharmacist and a pediatrician work well as a collaborative team.

Dr. Hirotaka Yamashiro: Absolutely. Well, I think doctors and pharmacists—after my pediatric residency, I did a pediatric respirology fellowship at the Hospital for Sick Children. When you are looking after the in-patients or even in an outpatient setting for different patients with a whole variety of conditions—cystic fibrosis and whatnot—it's a multi-disciplinary team. So the pharmacists in that setting—for instance, the cystic fibrosis clinic I was in—would be very involved altering dosages, but they would have the information right there—what the physiotherapist found, what the pulmonary function testing showed, what the medical reviews showed—so that when they leave that setting, whether it's an in-patient or a clinic setting, they've had the benefit, really, of that kind of collaborative care.

In a hospital setting obviously it's easier to do, because you have rounds, you have structures where you can bring in different people to talk very easily. In a community setting that's much more of a challenge because of the physical separation. You have to put a mechanism in place to encourage that same sort of—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Mitchell. Ms. Witmer?

Mrs. Elizabeth Witmer: Thank you very much for your presentation. You indicate here that we should

consider that any power to independently alter or renew prescriptions would contain this exception. Would there be any exception where pharmacists could be able to renew a prescription or are you saying, carte blanche, that should never, ever, ever happen?

1730

Dr. Hirotaka Yamashiro: I can see the concern about where you start being dogmatic, "You can't do this," or "You can't do that." But the other side of the coin is, if you start specifying, "This condition's okay," "That condition's okay," "This type of medicine's okay," you're going to end up with a pretty long menu left. Then you're getting the word out to pharmacists, "Okay, here's the big list, and you can do anything on this list." I wonder if that would be actually more confusing. I don't know if it's much easier to make sure that you just encourage—it's almost like a last resort where the physician is just not available, or you just don't know. Sometimes it happens, right? There are children who are on anti-epileptic, anti-seizure medications, and they have to renew things on an emergency basis.

But if anybody's on chronic medication, it usually means they have a chronic illness. With a chronic illness, we really think that, whether it's two words or a full conversation, oversight really cannot be removed.

Mrs. Elizabeth Witmer: So basically you're saying no?

Dr. Hirotaka Yamashiro: From a patient safety standpoint, if you look at all the issues that have gone on in the hospital setting with C. difficile, everything comes down to communication and information and then the sharing of that.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Dr. Yamashiro, on behalf of the Pediatricians Alliance of Ontario.

ONTARIO COALITION OF MENTAL HEALTH PROFESSIONALS

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter, Mr. Cohen of the Ontario Coalition of Mental Health Professionals, to please come forward. Welcome, Mr. Cohen, Please begin.

Mr. Rod Cohen: Hello. I have already spoken with some of you quite recently at the legislative select committee. My name is Rod Cohen; I am the chair of the Ontario Coalition of Mental Health Professionals and also the past president of the Ontario Society of Psychotherapists.

The Ontario Coalition of Mental Health Professionals is an umbrella organization whose members are professional associations in the field of mental health. Founded in 2002 and officially convened in 2004, the coalition is an organization of non-statutory, self-regulated, like-minded partners dedicated to the recognition of psychotherapy and counselling in the province. There are 13 member associations in the coalition, representing psychotherapists; counsellors; marriage and family therapists; and art, drama, music, play and child therapists.

The coalition was specifically formed to address the issue of the incoming regulation of psychotherapy and counselling in Ontario. It strives to understand the needs of the diverse community of its members in Ontario and aspires to being inclusive in its membership and a strong voice for the promotion of psychotherapy and counselling. Our goals include promoting the development of policies and practices for the provision of accessible, competent and accountable psychotherapy and counselling services throughout the human life span, in a manner sensitive to the pluralistic nature of Ontario's society; to seek government regulation of non-statutory, self-regulating mental health professionals as indispensable members of the health care system in Ontario; and to research awareness of the issues and their implications among professionals, government and other stakeholders.

Since its inception, the coalition has worked vigorously to promote the statutory regulation of those who currently provide mental health services under a system of voluntary non-statutory self-regulation. Over the past number of years, we have worked extensively with HPRAC and the government of Ontario to change the legislative and regulatory framework governing psychotherapy services so as to promote and enhance public protection and greater clarity regarding the skills, training and regulation of mental health professionals.

These efforts culminated in the Psychotherapy Act, 2007, which created the new college of psychotherapists and registered mental health therapists and the designation of two new protected titles for members of the college, namely "psychotherapist" and "registered mental health therapist."

The coalition was very supportive of the Psychotherapy Act and would like to see government move expeditiously to implement the key tenets of the legislation. Bill 179, currently under review here by yourselves, proposes changes to important provisions of the Psychotherapy Act, 2007, before the legislation has even come into force.

While the coalition understands the rationale for such amendments, we argue that further modifications are necessary to protect the spirit and intent of the act. The sections below outline our analysis of the impact of the proposed amendments and provide a recommendation for further strengthening the bill.

Bill 179 proposes two material changes to the Psychotherapy Act. In section 23 of the bill, it is proposed that the protected title "psychotherapist" be amended to "registered psychotherapist" for those regulated under the new college. Subsection 24(6) and section 26 suggest further changes to allow the use of the "psychotherapist" title by those currently regulated by the College of Nurses of Ontario, College of Occupational Therapists of Ontario, College of Physicians and Surgeons of Ontario, College of Psychologists of Ontario and College of Social Workers and Social Service Workers of Ontario, subject to certain conditions.

These changes would allow designated members of all of the regulatory colleges whose members have access to

the controlled act of psychotherapy to publicly identify themselves as psychotherapists as long as any written or oral use of the title was combined with reference to their profession or regulatory college. For example, a nurse who practises the controlled act of psychotherapy would, under the proposed bill, be allowed to refer to himself or herself as a nurse/psychotherapist or as a member of the College of Nurses of Ontario psychotherapist. However, only members of the College of Psychotherapists and Registered Mental Health Therapists of Ontario would be able to refer to themselves as a registered psychotherapist.

The amendments identified above provide a credible response by government to address the fact that some professionals regulated under existing colleges, such as physicians and surgeons, have been referring to themselves as psychotherapists for several years. The provisions of the act, if enacted unchanged, would have required these professionals, who already have access to the controlled act of psychotherapy, to cease referring to themselves as psychotherapists unless they sought membership in the new College of Psychotherapists and Registered Mental Health Therapists. This situation could be unacceptable to long-serving professionals who have been providing psychotherapy services for many years and have sometimes referred to themselves as psychotherapists.

The coalition supports the amendments proposed in subsection 24(6) and section 26 because they expand the eligibility to use the title "psychotherapist," subject to sensible qualifications that ensure that public protection and clarity is not undermined. One of the driving concepts behind title protection is to facilitate clarity regarding regulation, training and skills. Members of the public who encounter problems in dealing with regulated health professionals should know where to turn for help. For example, problems with individual nurses would be addressed by the colleges of nurses, occupational therapists and so on.

The risk in expanding the title "psychotherapist" to members of five additional colleges is that the public may be left in the dark about with whom they're actually dealing, what qualifications the professional has and where they can turn for assistance if things go wrong. For this reason, the government's proposal that extension in the availability of the title be combined with strict qualifications about also identifying one's home profession makes sense. The public is much better served by being able to choose between a nurse psychotherapist, a physician psychotherapist or a social worker psychotherapist, rather than just three more generic psychotherapists who actually may all have quite different education, training and regulatory regimes.

It's imperative that these sections of the bill remain in the legislation as the bill progresses through the standing committee. Any changes could have the potential to undermine public protection, clarity and choice. The extension in the title "psychotherapist" to other disciplines has the potential to undermine the clarity and rationale for the act unless other amendments are passed to ensure that a distinct title remains available for members of the new College of Psychotherapists and Registered Mental Health Therapists. For this reason, the coalition strongly supports the government's proposal in section 23 that the protected title available to members of the college be amended to "registered psychotherapist." The amended title helps to ensure that members of the college are able to cultivate a distinct identity with the public.

Despite our general support for the legislation, the coalition believes strongly that the current package of amendments proposed through Bill 179 is incomplete and, as it stands, inconsistent. As mentioned previously, the government has sought to prevent potential confusion regarding the expansion of psychotherapists to the additional five regulatory colleges by changing the name of the protected title to "registered psychotherapist." Only those regulated by the College of Psychotherapists and Registered Mental Health Therapists of Ontario will have access to this new title, and with this modification in the protected title, it would now make sense to also amend the name of the college to reflect and be consistent with this change. It is suggested then that the name of the new college be amended to the College of Registered Psychotherapists and Mental Health Therapists of Ontario. Such a name would promote greater public clarity and be more consistent with the titles of the members regulated by the college.

1740

The Chair (Mr. Shafiq Qaadri): Just under a minute, Mr. Cohen.

Mr. Rod Cohen: The college strongly recommends that the Standing Committee on Social Policy support an amendment to the name of the College of Psychotherapists and Registered Mental Health Therapists to reflect the changes made elsewhere in the bill. It is possible that such an omission is merely an oversight by government, but the committee has an opportunity to rectify this situation.

The coalition thanks the members of the Standing Committee on Social Policy for the opportunity to comment here. We are confident the committee will take the necessary measures through the legislative review to ensure that critical mental health services are provided to the public in a way that promotes transparency, high quality and public choice.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Cohen. I think I'll just thank you on behalf of all committee members for coming today and for your deputation on behalf of the Ontario Coalition of Mental Health Professionals.

ONTARIO SOCIETY OF CHIROPODISTS

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter, Mr. Springer of the Ontario Society of Chiropodists. Welcome. Please begin, Mr. Springer.

Mr. Andrew Springer: Thank you very much. I have to begin almost every presentation by explaining to people what a chiropodist is. A chiropodist is regulated by the College of Chiropodists of Ontario, and we provide foot care to people of all ages, from all backgrounds. We treat diseases, disorders and dysfunctions of the foot and the foot as it relates to the lower extremities and to the rest of the body.

Ontario chiropodists are actually the largest group of foot care providers in Canada, and there is a broad distribution of practitioners across the province, right through to underserviced areas and First Nation communities.

Chiropodists have been regulated in Ontario for a long time, since 1944, and have always been considered primary care practitioners. They work independently, though they do and can function as part of a health care team. They do not require referral to access their services.

Unfortunately, this is the only jurisdiction in Canada that still uses the antiquated term "chiropodist." The more modern term is "podiatrist." We have a separation here to identify those people trained in the United States and registered before 1993. Those are the only folks in Ontario who are called podiatrists, and anyone trained anywhere else in the world or in Ontario is still called a chiropodist. This actually causes a bit of a problem in terms of access to service for our patients because a lot of people are unfamiliar with the term, though there are 445 chiropodists registered in Ontario and only 75 podiatrists, not all of whom actually are practising here; many are out of province and just retain an Ontario licence.

Chiropodists in Ontario provide in excess of one million patient visits per year and deal with people living with diabetes and its complications, those with poor circulation and ulceration, as well as the very mundane—those who have difficulty with corns and calluses and problems with their toenails. However, I think the salient point here in terms of the services provided is that chiropodists provide care that ensures that people retain mobility and independence; there are clear health benefits and clear savings in terms of health care costs for those people who do not have to have amputation because they've received preventive care and education from a practitioner; from those whose ulcerations are healed; from those who continue to be ambulatory and stimulate their circulation simply because they are moving around.

You do have a submission from us in hand and I won't go into all the details of that. I think the most important detail from our standpoint is that we see Bill 179 as somewhat of a missed opportunity in terms of dealing with some of the things that have been legislated for chiropodists. The focal point for that is the communication of a diagnosis. Legislation—for example, the Consent to Treatment Act—requires that we communicate the reason for treatment that we're providing to patients, the alternatives, the benefits and the risks, and to be able to do that effectively we need to be able to tell people what's wrong with them. It only makes sense.

Chiropodists hold an undergraduate degree before being admitted to a postgraduate diploma program, three years of intensive study, and they do authorize acts such as the injection of substances into the foot, prescription of medications and cutting into the subcutaneous tissues of the foot. These are acts that do carry great risk for our patients, especially those who are considered high-risk because of their health status. As a result of that, we feel that it only makes sense, after all of these years of providing this kind of care and of providing this kind of primary care independently, that legislatively we'd be permitted to communicate the diagnosis to our patients.

The Chair (Mr. Shafiq Qaadri): Thank you very much, Mr. Springer. We have generous time, beginning with Ms. Elliott, about 90 seconds a side.

Mrs. Christine Elliott: Could you just explain what you are able to communicate at this point and what you would not be able to?

Mr. Andrew Springer: Well, it's very interesting. The whole debate around communication of a diagnosis is a little bit about smoke and mirrors anyway. I gave you a document that was generated from a working group of which I was a part back in 1994, where we sat around at the College of Physicians and Surgeons of Ontario to determine what goes into this authorized act. It's very specific in terms of the number of things that call it a diagnosis. The fact of the matter is, most of the time, including physicians, very often what we call, as lay people, a "diagnosis" is the result of an assessment, and that's what's communicated to patients. It has become somewhat of a matter of boasting amongst different colleges that, "We have this act and you don't." We're just trying to clear that up. But we can and have to communicate our findings-what's wrong with you, what's caused your problem—and very often that is a disease, a disorder or a dysfunction. So in essence, that's how it works.

The Chair (Mr. Shafiq Qaadri): I'd now like to offer the floor to Madame Gélinas.

M^{me} France Gélinas: I forgot for one minute—do you need a referral to see somebody or can somebody walk in?

Mr. Andrew Springer: Somebody can walk in independently.

M^{me} France Gélinas: Okay, so you don't need a referral?

Mr. Andrew Springer: No-

M^{me} France Gélinas: So you could get somebody, do your assessment and then you cannot tell them what's wrong with them, but you can treat them?

Mr. Andrew Springer: Theoretically, yes.

M^{me} France Gélinas: Oh, lovely. Your point is clear, and well taken. Thank you.

The Chair (Mr. Shafiq Qaadri): To the government side: Mr. Balkissoon.

Mr. Bas Balkissoon: Thank you very much. You've clarified my confusion too.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Springer, for your deputation on behalf of the Ontario Society of Chiropodists.

ONTARIO DENTAL HYGIENISTS' ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters, Ms. Newton and Ms. Carter of the Ontario Dental Hygienists' Association. Please begin.

Ms. Shelley Newton: Good afternoon. My name is Shelley Newton and it is my privilege to lead the Ontario Dental Hygienists' Association and my honour to address you on behalf of our members. We have provided the standing committee with a written submission that provides more detail about the issues we will talk about today, as well as some comments on sections of Bill 179 that we will not have time to address today.

The Ontario Dental Hygienists' Association, or ODHA, is a non-profit organization representing the interests of registered dental hygienists and promoting the profession of dental hygiene in Ontario. At present, ODHA has close to 6,000 professional members providing care to an estimated eight million Ontarians. Recognized in Canada for more than 60 years, dental hygienists are health professionals contributing to overall health through the prevention of oral disease and the promotion of oral health. We are regulated by the College of Dental Hygienists of Ontario under the Regulated Health Professions Act and the Dental Hygiene Act.

Most often employed by dentists in private dental offices, a growing number of dental hygienists are choosing careers in public health, education, hospitals or independent practices, including mobile services for long-term-care homes and those confined to their home. More than 2,200 dental hygienists have received authorization to self-initiate their controlled act of scaling teeth and root planing, a choice made possible through the amendment of the Dental Hygiene Act in 2007.

Self-initiation has increased the public's access to affordable, preventive oral care services by the practitioner of their choice. At present, there are 110 independent, direct care dental hygiene practices, both storefront and mobile, and this number is continually increasing.

Dental hygienists are highly skilled in assisting clients to attain and maintain optimal oral health. We provide professional treatment that helps to prevent periodontal or gum disease and caries or cavities. We use a process that includes assessing the oral condition, planning treatment according to individual needs, implementing the treatment plan, and evaluating the success of the treatment and planning for the future.

Our comments and suggestions on Bill 179 are related to three sections of the bill, those specifically related to the Dental Hygiene Act, the Healing Arts Radiation Protection Act, or the HARP Act, and the changes proposed for the RHPA itself.

First and foremost, ODHA is pleased that the government has moved forward to implement the recommendations related to prescribing, dispensing, compounding and selling drugs in the practice of dental hygiene. It is indeed an important step. However, it is a very small step

in comparison to the potential this bill could have afforded to the profession in its service to Ontarians.

In the HPRAC review of drugs used by dental hygienists, we sought the ability to perform local anaesthesia, which would mean the additional authorized act of administration of a substance by injection. Local anaesthesia is necessary for the management of pain and anxiety that may occur when scaling and root planing procedures are being performed.

At this time, a client who requires local anaesthesia must be seen at a dental office, scheduled on a day when a dentist is available and wait for a dentist to administer the local anaesthetic. The dental hygienist can then proceed with scaling and root planing. The alternative is to either treat the client without pain control or not treat them at all.

We strongly believe this denies the client's right to access care from a provider or location of their choice; nor is it consistent with the HealthForceOntario position of utilizing health care practitioners to the fullest extent of their skills, competencies and scope of practice. It also continues to make dental hygienists dependent on dentistry.

Close to 300 dental hygienists in Ontario are currently qualified to administer local anaesthetic. Their qualification comes from completing an entry program of study in one of the western provinces or travelling out of province post-diploma to take a course. Those few dental hygienists who are able to administer local anaesthetic in Ontario have had to receive delegation from a physician who is qualified to administer oral anaesthetic. The Royal College of Dental Surgeons of Ontario does not permit its members to delegate controlled acts. The process of obtaining delegation from a physician is a complicated and convoluted process in order to utilize our skills to benefit our clients.

Independent dental hygienists contribute significantly to their communities. Dental hygiene is an accessible, convenient, cost-effective and flexible service for remote communities, the uninsured and the poor. By adding the ability to administer local anaesthesia, we will be even more effective in providing care to clients in all settings.

We know that there is a need for education and skill training. We will work with the CDHO and the schools to revise the current program and to develop a process for current practitioners.

All professions evolve and advance with time. This is a natural process which helps meet the growing demands on the health care system. In the spirit of interprofessional collaboration, the next logical evolution for our profession is the ability to prescribe and self-initiate radiographs. Radiography is a valuable diagnostic tool for us. X-rays are vital to the assessment of the tissues below the gum line, bone levels, deep calculus or tartar or misplaced crown and bridge cement.

We need the ability to perform a comprehensive assessment. We are well educated and able to discern when an X-ray is needed. Clients who are being seen by an independent dental hygienist can only receive full and

comprehensive dental hygiene care with the use of radiographs. With portable X-ray equipment, we could provide a service without transporting the client to a dental office. Dental hygienists in Alberta, Manitoba and Saskatchewan expose, process and interpret dental radiographs on their own authority. A dental hygienist from Ontario who relocates to one of those provinces is expected to do the same, based on the education received in Ontario.

It is interesting to note that dental hygienists can own radiography equipment but we cannot prescribe radiographs or be radiation protection officers under the current HARP Act. This seems counterintuitive, and ODHA seeks to change this anachronistic situation. Dental hygienists should be named as radiation protection officers under section 9 of the HARP Act. CDHO will ensure that only those dental hygienists who meet their requirements will be able to self-initiate radiographs and be radiation protection officers.

I am going to ask Margaret Carter, ODHA's executive director, to very briefly address some of our concerns

about some proposed changes to the RHPA.

Ms. Margaret Carter: Good afternoon. While some of the changes proposed for the RHPA are reasonable and forward-thinking, ODHA is concerned about some of the amendments proposed for the RHPA. We do understand that you may have heard similar concerns from others.

Enshrined in the RHPA is the privilege of self-regulation or self-governance. Except for the cost of public councillors, the members of our profession fully fund the operations of their regulatory college. Our members truly recognize and appreciate this privilege, as this is a profession which, prior to the RHPA, was regulated by another profession; that is, dentistry. Dental hygienists have truly seen the other side.

It is with this backdrop that some of the proposed amendments in Bill 179 are of great concern to the profession, as they seem to significantly and harmfully erode our hard-fought-for self-governance. In our view, there is no greater threat to the self-governance than the proposal to appoint a college supervisor. The minister already has significant authority in section 5 of the RHPA to require a college to take action. To our knowledge, the minister has never exercised this authority, so ODHA cannot understand why the ministry seeks to expand upon the authority in section 5.

ODHA is also very concerned about the breadth of the authority to establish an expert committee to advise the

minister. ODHA understands that this is the role of HPRAC.

That said, we do understand that the current process for approving drug regulations is cumbersome, untimely, resource-consuming, and often so delayed that the regulations are outdated by the time they are approved. For this reason we can foresee an expert committee to advise the minister specifically about drugs. However, we are very concerned about the potential for membership of that committee to perpetuate traditional roles of subservience and turf protection under the guise of public protection.

ODHA is a strong proponent of collaborative care, and supports interprofessional collaboration—

The Chair (Mr. Shafiq Qaadri): About a minute left.

Ms. Margaret Carter: Thank you very much—and the removal of barriers that challenge such collaboration. However, we are very concerned that the current wording of subsection 11 implies that there must be one common standard amongst all of the practitioners that share the same, or parts of the same, controlled act. Professions sharing a controlled act must work together to achieve standards of practice that are as consistent as possible, but that must be within the overall framework and scope of practice of individual health care professions.

There are other components of Bill 179 about which we have concerns, and ODHA has addressed these in our written submission.

In conclusion, a dental hygienist who is able to administer local anaesthesia and prescribe and self-initiate X-rays will benefit the public by being more effective and efficient.

This will also help meet the demand on the health care system and increase interprofessional collaboration.

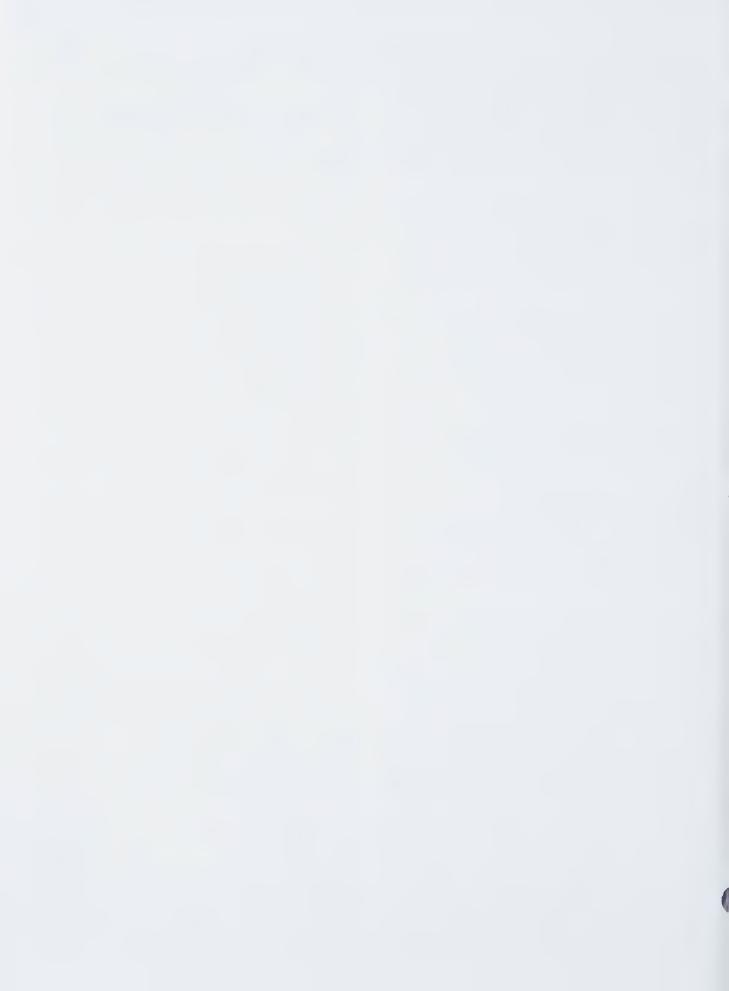
Thank you for your time and consideration. If there is time, we're happy to take questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Newton and Ms. Carter, for your deputation on behalf of the Ontario Dental Hygienists' Association.

Just for the information of committee members and Legislative Assembly officers here, the deadline for amendments remains Wednesday, October 14, at 5 p.m., and we'll be having clause-by-clause hearings on Monday, October 19, in this room.

If there is no further business before the committee, committee adjourned.

The committee adjourned at 1754.



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Legislative Assembly of Ontario

First Session, 39th Parliament

Official Report of Debates (Hansard)

Monday 19 October 2009

Standing Committee on Social Policy

Regulated Health Professions Statute Law Amendment Act, 2009

Assemblée législative de l'Ontario

Première session, 39^e législature

Journal des débats (Hansard)

Lundi 19 octobre 2009

Comité permanent de la politique sociale

Loi de 2009 modifiant des lois en ce qui concerne les professions de la santé réglementées

Chair: Shafiq Qaadri Clerk: Katch Koch Président : Shafiq Qaadri Greffier : Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Monday 19 October 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Lundi 19 octobre 2009

The committee met at 1400 in committee room 1.

REGULATED HEALTH PROFESSIONS STATUTE LAW AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT DES LOIS EN CE QUI CONCERNE LES PROFESSIONS DE LA SANTÉ RÉGLEMENTÉES

Consideration of Bill 179, An Act to amend various Acts related to regulated health professions and certain other Acts / Projet de loi 179, Loi modifiant diverses lois en ce qui concerne les professions de la santé réglementées et d'autres lois.

The Chair (Mr. Shafiq Qaadri): Colleagues, I'd like to call the meeting to order. As you know, we're here for clause-by-clause consideration of Bill 179, An Act to amend various Acts related to regulated health professions and certain other Acts.

Before we begin consideration of the various amendments and motions, is there any other general business before the committee? If not, I would invite Mr. Balkissoon to please begin with government motion 1.

Mr. Bas Balkissoon: I move that subsection 11.1(1) of the Commitment to the Future of Medicare Act, 2004, as set out in subsection 1(2) of the bill, be amended by striking out "for providing a designated service" and substituting "for a designated service rendered."

It's just a technical motion, and I hope the committee would support it.

The Chair (Mr. Shafiq Qaadri): Are there any further questions or comments that anyone would like to make on that? If not, we'll proceed to the vote. Those in favour of government motion 1? Those opposed? Government motion 1 is carried.

Motion 2.

Mr. Bas Balkissoon: I move that subsection 11.1(3) of the Commitment to the Future of Medicare Act, 2004, as set out in subsection 1(2) of the bill, be struck out and the following substituted:

"Application to board

"(3) Any person or entity with standing may apply to the board,

"(a) for a review to determine whether a charge, payment or other benefit was made or accepted contrary to subsection (1); or

"(b) for a review of a determination made under subsection (2).

"Standing

"(3.1) For the purposes of subsection (3),

"person or entity with standing' means,

"(a) in clause (3)(a),

"(i) a person or entity that charged or may have charged or accepted or may have accepted payment or other benefit for a designated service rendered to an insured person,

"(ii) an insured person to whom a designated service was rendered or may have been rendered or who was charged or may have been charged for a designated service or who paid for or provided a benefit or may have paid for or provided a benefit for a designated service,

"(iii) a prescribed person referred to in subsection (2), or

"(iv) any other person or entity provided for in the regulations, and

"(b) in clause (3)(b),

"(i) a person or entity that has been determined to have charged or accepted payment or other benefit for a designated service rendered to an insured person,

"(ii) an insured person to whom a designated service was rendered who has been determined to have been charged or determined to have paid for or provided a benefit for the designated service, or

"(iii) any other person or entity provided for in the regulations."

The Chair (Mr. Shafiq Qaadri): Any questions or comments? We'll proceed to the vote. Those in favour? Those opposed. Motion carried.

Motion 3.

Mr. Bas Balkissoon: I move that subclause 11.1(7)(a)(ii) of the Commitment to the Future of Medicare Act, 2004, as set out in subsection 1(2) of the bill, be amended by striking out "service" at the end and substituting "designated service."

Another technical amendment.

The Chair (Mr. Shafiq Qaadri): Comments?

M^{me} France Gélinas: It was just a technical amendment? The "designated" had been forgotten; is that it?

Mr. Bas Balkissoon: That's correct.

The Chair (Mr. Shafiq Qaadri): Further comments? Vote: All those in favour? Those opposed? Motion carried.

Shall section 1, as amended, carry? Section 1 carries, as amended.

Section 2: NDP motion 4.

M^{me} France Gélinas: I move that section 2 of the bill be amended by adding the following subsection:

"(1.1) Subsection 5(1) of the act is amended by adding the following paragraph:

"5. Communicating a diagnosis."

The Chair (Mr. Shafiq Qaadri): Any further comments on that from yourself?

M^{me} France Gélinas: Currently, podiatrists are permitted to communicate a diagnosis, and although chiropodists do the exact same work—it's just that they have been trained in Canada rather than in the US—they are not allowed to do this. The Ontario Society of Chiropodists made compelling arguments for changing this inequality based on where you took your training although you do the exact same work.

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon.

Mr. Bas Balkissoon: The government cannot support this motion at this time. HPRAC is currently reviewing the model of foot care and other issues related to the regulation of chiropody and podiatry in Ontario. I would say that it's inappropriate at this time to make this particular change until we receive the comprehensive advice from HPRAC.

The Chair (Mr. Shafiq Qaadri): Ms. Elliott.

Mrs. Christine Elliott: We would support the amendment being put forward by Ms. Gélinas for the NDP. It just corrects some confusion which could be easily corrected by making this change.

The Chair (Mr. Shafiq Qaadri): Further comments? We'll proceed with the vote. Those in favour of NDP motion 4? Those opposed? I declare NDP motion 4 to have been defeated.

PC motion 4.1.

Mrs. Christine Elliott: I move that section 2 of the bill be amended by adding the following subsection:

"(1.1) Subsection 5(2) of the act is amended by striking out 'who is a podiatrist' in the portion before paragraph 1."

Again, this was at the request of the Ontario Society of Chiropodists, just to allow the chiropodists to execute the action of communicating a diagnosis and removing the confusion between the designations of "podiatrist" and "chiropodist" to allow for the entire practice to be able to do this.

The Chair (Mr. Shafiq Qaadri): Comments? Vote: Those in favour of PC motion—

Interjection.

The Chair (Mr. Shafiq Qaadri): Oh, sorry. Mr. Balkissoon.

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Mr. Bas Balkissoon: Again, the government cannot support this motion because HPRAC is doing a review at this present time, and until that review is completed, it

would be inappropriate to determine whether this would be an appropriate thing to do because of the financial impacts that it may have, and it may also have an impact on wait times.

The Chair (Mr. Shafiq Qaadri): Now PC motion 4.1: We'll proceed to the vote. Those in favour? Those opposed? PC motion 4.1 is defeated.

Shall section 2 carry? Carried.

Section 3: PC motion 5.

Mrs. Christine Elliott: I move that section 3 of the bill be amended by adding the following subsection:

"(2) Section 4 of the act is amended by adding the following paragraph:

"4. Ordering the application of a prescribed form of energy."

This amendment was proposed by the College of Chiropractors of Ontario and the Ontario Chiropractic Association, and would enable chiropractors to order diagnostic tests in a manner consistent with section 27.1 of the RHPA. Both the CCO and the OCA believe that access to diagnostic tests by chiropractors will diminish the necessity of referring patients to other health professionals to test for disorders that are within the chiropractic scope of practice, resulting in cost savings and improved care.

The Chair (Mr. Shafiq Qaadri): Now, before I—or even if I—invite committee members to comment, I am advised that this particular motion is beyond the scope and therefore out of order. I will invite you to accept the Chair's word on that. If you would like some further strengthening of that argument, we have legislative counsel available, but that is up to you.

M^{me} France Gélinas: I would like further information as to why this is ruled out of order.

Le Président (M. Shafiq Qaadri): C'est absolument votre choix. Nous commençons.

Legislative counsel, please.

Mr. Ralph Armstrong: Well, I speak to my general understanding of the rules of procedure in that normally, in an amending bill, a section of an act that is not opened by the bill cannot be amended by motion in committee. I will defer to the procedural clerk if I have misunderstood.

The Chair (Mr. Shafiq Qaadri): I'll give the floor to Mrs. Witmer and then—

Mrs. Elizabeth Witmer: Well, I would then like to ask for unanimous consent to open this section of the act.

The Chair (Mr. Shafiq Qaadri): That is allowed. Mrs. Witmer has now put a motion before the committee. She's asking for unanimous consent. Is there unanimous consent?

Mr. Bas Balkissoon: I don't think the government can support unanimous consent on this particular issue.

The Chair (Mr. Shafiq Qaadri): I do not hear unanimous consent. I will therefore pass on to Madame Gélinas.

M^{me} France Gélinas: I still don't understand. The bill makes reference to the law that governs the practice of chiropractors; therefore, it's in. I mean, we are making amendment to the Chiropractors Act with Bill 179.

Therefore, I don't understand why it's being ruled out of order.

The Chair (Mr. Shafiq Qaadri): To legislative counsel.

Mr. Ralph Armstrong: Once again, it's my understanding that this rule is a fairly mechanical one, that although the general scope of chiropractic might be said to be open, the actual section 4 to which there's an amendment has not been opened. Once again, I'm prepared to defer to the rules of procedure—I'm speaking as a lawyer—that this section is not open. This is a procedural issue.

The Chair (Mr. Shafiq Qaadri): I would say, as Chair, that if Madame Gélinas would like further information on it, I would appreciate if you would give something to her in writing.

Is there any further consideration?

Mrs. Carol Mitchell: I certainly respect your ruling, Mr. Chair. With regard to motion 6, would it fall within the same category?

The Chair (Mr. Shafiq Qaadri): We'll rule on it when we get to it, Ms. Mitchell, but possibly. We have now motion 5 before the committee. Are there any further comments on motion 5?

I'll take it as the committee's will that we have now officially ruled it out of order and therefore it is disposed of

I would now invite Madame Gélinas to present NDP motion 6.

M^{me} France Gélinas: Although I still don't fully understand why it's being ruled out of order, I say that if the PC motion was ruled out, mine is probably following suit, because mine looks pretty well similar. But we'll—

The Chair (Mr. Shafiq Qaadri): You may present it or withdraw it, or have it ruled out of order momentarily, as you wish.

M^{me} France Gélinas: Okay. I will present it anyway. I move that section 3 of the bill be amended by adding the following subsection:

"(2) Section 4 of the act is amended by adding the following paragraph:

"4. Ordering the application of a prescribed form of energy."

The Chair (Mr. Shafiq Qaadri): And the same motion, for the same reason, is ruled out of order, for reasons more or less comprehensible or not.

Therefore, I will now move to ask: Shall section 3 carry? Carried.

NDP motion 7 on section 4: Madame Gélinas.

Mme France Gélinas: All right.

I move that section 4 of the bill be amended by adding the following subsection:

"(1.1) Section 4 of the act is amended by adding the following paragraph:

"4. Administering a substance by injection."

The dental hygienists now have an independent scope of practice that allows them to work on their own. Lots of people are very nervous when they go and require the services of a dental hygienist, and some of the procedures that they do could be painful, no matter how careful they are at doing their work. This would make it a lot more tolerable for a lot of people.

The Chair (Mr. Shafiq Qaadri): Any further comments? Ms. Elliott and then to Mr. Balkissoon.

Mrs. Christine Elliott: I would support this amendment as well. It was clear that the dental hygienists would like to have this ability.

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon?

Mr. Bas Balkissoon: The government cannot support this motion at this time. This matter would require further policy review and consultation.

HPRAC did advise the minister on the issue. They found that dental hygiene education in Ontario currently does not support the performance of this activity, so the government supports HPRAC's findings.

The Chair (Mr. Shafiq Qaadri): Further comments? M^{me} France Gélinas: Certainly, ensuring competence is the work of a college, and I couldn't see the college of hygienists or any other college giving their members the right to do something that they are not fully trained to do safely.

By passing this amendment, we're basically giving the college the opportunity to review the training that is given to dental hygienists to make sure that this work is performed. The college has no intention of giving their members the right to do something that they are not qualified to do, but they are willing to review all of the colleges that offer this training in Ontario to make sure that, in the future, once they feel their members can perform this task safely, the bill allows them to move forward.

The Chair (Mr. Shafiq Qaadri): Any further comments before the vote? We'll proceed now to consider the vote. Those in favour of NDP motion 7? Those opposed? I declare NDP motion 7 to have been defeated.

Shall section 4 carry? Carried.

Since we have not received any amendments or motions for sections 5 and 6, I invite the committee to consider them en bloc. Those in favour of sections 5 and 6 to carry? Carried.

We'll proceed now to section 7, NDP motion 8.

M^{me} **France Gélinas:** I move that section 7 of the bill be amended by adding the following subsection:

"(0.1) Section 3 of the Dietetics Act, 1991 is repealed and the following substituted:

"Scope of practice

"3. Dietetics is the assessment of nutrition related to health status and conditions for individuals and populations, the management and delivery of nutrition therapy to treat disease, the management of food systems, and building the capacity of individuals and populations to promote or restore health and prevent disease through nutrition and related means."

The Chair (Mr. Shafiq Qaadri): Comments?

M^{me} France Gélinas: Basically, the College of Dietitians of Ontario thought that this change was necessary to ensure that a different objective was met with the

scope of practice; that is, to inform the public of the activities of their profession not necessarily related to a controlled act. Many other professions, if you look, have a broader interpretation of scope of practice than simply the controlled acts that make up bills. This is what this amendment is trying to do: to show that the profession of dietitian is broader in scope than just the controlled acts.

The Chair (Mr. Shafiq Qaadri): Again, before I open the floor for the committee, it is with genuine regret that I inform you that that motion is out of order.

Mme France Gélinas: Why, again?

The Chair (Mr. Shafiq Qaadri): Why, again?

M^{me} France Gélinas: Is it always the same reason?

Mr. Ralph Armstrong: I've been handed a sheet of paper here which sets out the rule as I understand it. Amending a section of a parent act that is not before the committee is normally out of order. Section 3 of the Dietetics Act has not been opened. A new section 3.1 is being entered, but that's a separate section from 3. So 3 is not opened—it's not necessarily opened by the amendment to 3.1. Under the rules of clause-by-clause consideration, it is, in my understanding, out of order, and so, I believe, the Chair has ruled.

The Chair (Mr. Shafiq Qaadri): Is that satisfactory? M^{me} France Gélinas: No, but I'll accept it anyway.

The Chair (Mr. Shafiq Qaadri): Thank you. Having declared NDP motion 8 out of order, it is now disposed of.

I will now invite Madame Gélinas to please present NDP motion 9, which I am pleased to tell you is not out of order.

M^{me} France Gélinas: I move that section 3.1 of the Dietetics Act, 1991, as set out in section 7 of the bill, be amended by adding "and despite anything in the Public Hospitals Act, a member may order nutrition therapy in a public hospital" at the end.

Basically, when the nutritionists were here, they made it clear that they are the ones who write the nutrition prescriptions in the hospital, but they have to look around for another member of the team to sign them so that they can be applied in the hospital. It would make the collaboration between the different health care professionals more balanced as well as making it easier for people to benefit from the work that nutritionists/dietitians have to offer in the hospital setting.

The Chair (Mr. Shafiq Qaadri): Ms. Elliott.

Mrs. Christine Elliott: We would support this amendment as well. It was pretty clear from the deputation that was made by the dietitians that this would significantly assist them in getting nutrition therapy to patients in the easiest possible manner and would not require a physician's approval in order to proceed with it.

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon.

Mr. Bas Balkissoon: A matter of this type is better dealt with in regulation. As a result, the government cannot support this motion as it's before us. If Bill 179 is passed, the government may propose regulations that would look after this issue.

The Chair (Mr. Shafiq Qaadri): Further comments before the vote? We'll proceed to the vote. Those in favour of NDP motion 9? Those opposed? NDP motion 9 is defeated.

Shall section 7 carry? Carried.

Section 8: I invite Madame Gélinas to present NDP motion 10.

M^{me} **France Gélinas:** I move that section 8 of the bill be amended by adding the following subsection:

"(0.1) Subsection 1(1) of the Drug and Pharmacies Regulation Act is amended by adding the following definitions:

""dispensing" means the provision of prescription drugs to a patient by a professional pursuant to a prescription and as authorized by law after the professional,

"(a) records, selects, measures, reconstitutes if necess ary, inspects, packages and labels the drug; and,

""(b) uses professional judgment and all relevant patient-specific information available to confirm the appropriateness of supplying the drug in the particular situation;

""remote" means a defined geographic or underserved area of Ontario, established by regulation, where patients are unable to obtain dispensing services within a reasonable time frame."

What this motion sets out to do is define what "dispensing" means and what "remote" means in order to protect patient safety and ensure a benchmark when determining the needs of a community.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Mr. Bas Balkissoon: The government is not going to support this motion. This motion introduces the definition of "dispensing." Dispensing is a controlled act under the Regulated Health Professions Act, 1991. The term has never been defined in any Ontario legislation. Defining "dispensing" in this manner would have a significant impact on all health professionals who are permitted to dispense a drug. Additionally, the proposed definition would prevent the use of dispensing technology.

This motion also introduces the definition of "remote" and would limit the scope of remote dispensing. The proposed definition would restrict remote dispensing only to cases where patients live in an underserviced area—which would be hard to define—and would not be able to obtain dispensing services within a reasonable time frame. This would also limit the ability of the Ontario College of Pharmacists to regulate remote dispensing.

The Chair (Mr. Shafiq Qaadri): Any further comments?

M^{me} France Gélinas: I would say that this is the reason why we need a definition, because we are moving ahead with remote dispensing while there is no clear regulation or direction coming from legislation regarding what remote dispensing machines should be used for. To me, we have an obligation to give direction before this

new technology is rolled out, and this is what this amendment seeks to do.

The Chair (Mr. Shafiq Qaadri): Any further comments before we proceed to the vote? Seeing none, those in favour of NDP motion 10? Those opposed? NDP motion 10 is defeated.

NDP motion 11.

M^{me} France Gélinas: I move that subsection 118(3) of the Drug and Pharmacies Regulation Act, as set out in subsection 8(3) of the bill, be struck out and the following substituted:

"Same

"(3) Nothing in this act prevents any person from selling a drug to a person to use in the course of engaging in the practice of his or her profession, where that person may use that drug in the course of engaging in the practice of his or her profession."

This basically makes sure that selling a permitted drug remains an implicit rather than explicit authority.

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon.

Mr. Bas Balkissoon: Again, the government cannot support this motion. Stakeholders have advised that the existing wording of subsection 118(3) ensures that practitioners who use drugs in the course of engaging in the practice of their profession have access to them. The government is proposing its own motion on this matter that would retain the current wording. Stakeholders have also advised that the existing wording ensures that practitioners who use drugs in the course of engaging in the practice of their profession do have access to them. Hopefully our motion will solve that problem.

The Chair (Mr. Shafiq Qaadri): Comments?

M^{me} France Gélinas: The way the bill is written now, it has the unintended consequence that the obligation of providing explicit authority is unreasonable, and if we keep the wording as it is now, this is what health professionals are going to have to deal with.

The Chair (Mr. Shafiq Qaadri): If there are no further comments, we'll proceed to the vote. Those in favour of NDP motion 11? Those opposed? NDP motion 11 is defeated.

Government motion 12.

Mr. Bas Balkissoon: I move that subsection 118(3) of the Drug and Pharmacies Regulation Act, as set out in subsection 8(3) of the bill, be struck out and the following substituted:

"Same

"(3) Nothing in this act prevents any person from selling, to a member of the College of Chiropodists of Ontario, the College of Dental Hygienists of Ontario, the College of Midwives of Ontario or the College of Optometrists of Ontario, a drug that the member may use in the course of engaging in the practice of his or her profession."

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The Chair (Mr. Shafiq Qaadri): Any comments?

Mr. Bas Balkissoon: This is basically a technical amendment to return the wording that is in the current act.

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 12? Those opposed? Government motion 12 is carried.

NDP motion 13: Madame Gélinas.

M^{me} France Gélinas: I move that subsection 146(1.01) of the Drug and Pharmacies Regulation Act, 1991, as set out in subsection 8(5) of the bill, be amended by adding the following clause:

"(a.01) access to care in the area is truly limited, as defined in the regulations."

The Chair (Mr. Shafiq Qaadri): You're welcome to make comments.

M^{me} France Gélinas: Basically, it goes again with the idea of remote dispensing, where we want to make sure that the machines are used to fill a clear gap and not just because there's a profit to be gained. The motivation to put those dispensing machines out is very much based on how much profit can be made and not necessarily on the needs of a community. A community needs a real pharmacist. I represent ridings in northern Ontario where communities work really hard to try to recruit a pharmacy and a pharmacist. If those remote dispensing machines start to come into the rural areas, it will be impossible for those communities to ever recruit a pharmacist. A pharmacist who lives in your community, who becomes part of your community and who can help the community on many, many levels that a machine will never do—this is what this amendment is trying to do.

The Chair (Mr. Shafiq Qaadri): Comments? Mr. Balkissoon.

Mr. Bas Balkissoon: The government cannot support this motion. This motion would require that remote dispensing is available only in cases where access to care in the area is truly limited. This would limit the applicability of remote dispensing. Also, to put it in legislation, it would be hard to define. As communities grow, you will find that it gets outdated very quickly. I think what the government is trying to do here is to enable the technology, and we would leave it to the college to decide and regulate it in the future.

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll proceed to the vote. Those in favour of NDP motion 13? Those opposed? NDP motion 13 is defeated.

Shall section 8, as amended, carry? Carried. Section 9: NDP motion 14, Madame Gélinas.

M^{me} **France Gélinas:** I move that section 9 of the bill be amended by adding the following subsection:

"(1.1) Section 6 of the act is amended by adding the following subsection:

"Same

""(1.1) Despite subsection (1) or anything else in this act, a member of the College of Nurses of Ontario who holds an extended certificate of registration under the Nursing Act, 1991, may order the additional diagnostic imaging modality of computed tomography (CT) scans."

The Chair (Mr. Shafiq Qaadri): Further comments? M^{me} France Gélinas: From me?

The Chair (Mr. Shafiq Qaadri): As you wish.

M^{me} France Gélinas: Sure. It is important for a nurse practitioner, in order to do their work, to be able to order CT scans. The authority to order this specialized image will increase the overall efficacy of the nurse practitioner's assessment and treatment, and it will reduce the costs as a whole, because right now if the nurse does an assessment and believes that a CT scan is needed, then a referral to a different member of the health team needs to

The Chair (Mr. Shafiq Qaadri): First Ms. Witmer, then Mr. Balkissoon.

Mrs. Elizabeth Witmer: We certainly support this amendment and what Ms. Gélinas has just said. This applies to the nurse practitioner, of course. If the need for a CT scan was recognized, we could expedite the process without the referral to a physician, so this would certainly be in the best interests of the patient. Also, remember, this would only be for those people who have that extended certificate of registration under the Nursing

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon.

Mr. Bas Balkissoon: The government does not support this motion. The Healing Arts Radiation Protection Act does not distinguish between X-ray technologies with respect to the operation of an X-ray machine. Therefore, the motion is inconsistent with the structure of the act, and we see it as unnecessary.

The Chair (Mr. Shafiq Qaadri): Are there any further comments? Madame Gélinas?

Mme France Gélinas: Does that mean that under the act, they could order CTs like they order X-rays, or they

Mr. Bas Balkissoon: I don't have the act in front of me, but the advice I received from the ministry staffand if you could give me a second, Mr. Chair, I'll just consult.

Interjection.

Mr. Bas Balkissoon: I'm being told it does.

M^{me} France Gélinas: So the nurse with extended class can order a CT scan?

Mr. Bas Balkissoon: That's what the ministry staff tells me, under the changes that are being recommended later on in the bill also.

M^{me} France Gélinas: Very good.

The Chair (Mr. Shafiq Qaadri): We'll now proceed to the vote. Those in favour of NDP motion 14? Those opposed? NDP motion 14 is defeated.

NDP motion 15: Madame Gélinas.

M^{me} France Gélinas: I move that section 9 of the bill be amended by adding the following subsection:

"(2.1) Section 6 of the act is amended by adding the following subsection:

"Nurses

"(4) Despite anything else in this section, a member of the College of Nurses of Ontario who is a registered nurse and who has the appropriate education and knowledge may order mammograms and simple X-rays of the chest, ribs, arm, wrist, hand, leg, ankle or foot.""

This amendment is really in keeping with what is going on in the field of nursing. More and more nurses do triage, and more and more nurses have the appropriate education. The college of nurses is plenty capable of doing the assessment of their members to make sure that only members who are qualified to order those simple Xrays and mammograms do so, and it would make the work of many teams within hospitals, outpatient clinics, emergency community health centres etc. a much easier flow for the patients who use those services.

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon.

Mr. Bas Balkissoon: The government does not support this motion. We see that a comprehensive policy review would be required, including whether current nursing education in the province supports the safe performance of this activity by nurses.

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll proceed to the vote. Those in favour of NDP motion 15? Those opposed? NDP motion 15 is

defeated.

Shall section 9 carry? Carried.

Section 10, government motion 16: Mr. Balkissoon.

Mr. Bas Balkissoon: I move that subsection 10(1) of the bill be struck out and the following substituted:

"(1) The definitions of 'evaluator' and 'health practitioner' in subsection 2(1) of the Health Care Consent Act, 1996 are repealed and the following substituted:

""evaluator" means, in the circumstances prescribed

by the regulations,

""(a) a member of the College of Audiologists and Speech-Language Pathologists of Ontario,

"(b) a member of the College of Dietitians of Ontario, "(c) a member of the College of Nurses of Ontario,

"(d) a member of the College of Occupational Therapists of Ontario.

"(e) a member of the College of Physicians and Surgeons of Ontario,

"(f) a member of the College of Physiotherapists of Ontario,

"(g) a member of the College of Psychologists of

"(h) a member of a category of persons prescribed by the regulations as evaluators; ("appréciateur")

""health practitioner" means a member of a college under the Regulated Health Professions Act, 1991, a naturopath registered as a drugless therapist under the Drugless Practitioners Act or a member of a category of persons prescribed by the regulations as health practitioners; ("praticien de la santé")'

"(1.1) The definition of 'health practitioner' in subsection 2(1) of the act, as re-enacted by subsection (1), is amended by striking out 'a naturopath registered as a drugless therapist under the Drugless Practitioners Act.""

The Chair (Mr. Shafiq Qaadri): Comments?

Mr. Bas Balkissoon: This motion ensures that drugless therapists are included as health practitioners under the Health Care Consent Act.

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 16? Those opposed? Carried.

Shall section 10, as amended, carry? Carried.

Section 11: no motions received to date. Shall section 11 carry? Carried.

PC motion on section 12, motion 17: Ms. Elliott.

Mrs. Christine Elliott: I move that section 12 of the bill be amended by adding the following subsections:

"(0.1) The definition of 'laboratory' in section 5 of the Laboratory and Specimen Collection Centre Licensing Act is amended by adding 'but does not include a place where a member of the College of Naturopaths of Ontario is engaged in the practice of naturopathy for the purpose of treating his or her own patients' at the end.

"(2) The definition of 'laboratory' in section 5 of the act, as re-enacted by the Statutes of Ontario, 2007, chapter 10, schedule P, section 18, is amended by adding 'but does not include a place where a member of the College of Naturopaths of Ontario is engaged in the practice of naturopathy for the purpose of treating his or her own patients' at the end."

This amendment was proposed by the Ontario Association of Naturopathic Doctors to ensure that they have the required authority to perform and order lab testing for their patients.

The Chair (Mr. Shafiq Qaadri): Further comments?

Mr. Bas Balkissoon: The government does not support this motion as the language of the motion is inconsistent with the language of the Naturopathy Act, 2007, and the Laboratory and Specimen Collection Centre Licensing Act. Also, the Naturopathy Act, Bill 171, is awaiting proclamation. As soon as that is received, I believe it resolves the issue.

M^{me} France Gélinas: Are you saying that in Bill 171, you believe that naturopaths will be allowed to carry out

laboratory work?

Mr. Bas Balkissoon: I believe they will be allowed to carry out laboratory work as defined in their scope of practice, which is in the act.

M^{me} France Gélinas: Can you check?

Mr. Bas Balkissoon: I'm getting a nod.

M^{me} France Gélinas: Okay, so naturopaths will be allowed to order lab tests?

Mr. Bas Balkissoon: As long as it's in their scope of practice.

M^{me} France Gélinas: I'm watching your colleagues here. Some say yes; some say no.

The Chair (Mr. Shafiq Qaadri): I would invite ministry colleagues to offer a more definitive opinion.

Welcome. Of course you know the protocol; please do identify yourselves.

Ms. Christine Henderson: Christine Henderson, legal counsel for the Ministry of Health and Long-Term

Ms. Linda Altuna: Linda Altuna, counsel for the Ministry of Health and Long-Term Care.

Ms. Christine Henderson: It's my understanding. although my colleague, who is an expert in the lab legislation, can correct me if I'm incorrect, that the lab legislation is about to be amended under the Naturopathy Act to ensure that laboratory testing will be for the purposes of medical diagnosis, treatment, prophylaxis and the like.

Ms. Linda Altuna: The intent of the laboratory act is to regulate tests for medical purposes. Therefore, it doesn't apply to naturopaths' tests for naturopathic diagnosis, prophylaxis and treatment. It's not necessary to amend the act to allow for naturopathic tests for diagnosis, prophylaxis or treatment.

The Chair (Mr. Shafiq Qaadri): Further questions?

Madame Gélinas or anyone?

M^{me} France Gélinas: Absolutely. So one of you is saying that the medical practitioner can order lab tests. The other one is saying that naturopaths are not medical practitioners and therefore cannot order lab tests. Am I correct?

Ms. Linda Altuna: Medical professionals can order medical tests. Naturopaths can order tests for naturopathic purposes, but they're not regulated under the labs act.

M^{me} France Gélinas: That is not regulated under the labs act. So at the end of the day, they don't have access. They cannot send patients to the lab to get a glycemic index or whatever else. What the PCs were trying to do was to get them allowed to send requisitions to the lab. They still won't be allowed?

Ms. Linda Altuna: They'll only be allowed to order tests, when the Naturopathy Act is put through, for

naturopathic purposes.

The Chair (Mr. Shafiq Qaadri): Are there any further questions or comments? Ms. Elliott?

Mrs. Christine Elliott: I think this is just a follow-on from Ms. Gélinas's question. So they won't be able to order the same lab tests that medical doctors can order?

Ms. Linda Altuna: Yes, that's correct.

Mrs. Christine Elliott: Okav.

The Chair (Mr. Shafiq Qaadri): If there are no further comments, thank you for your participation.

We'll now proceed to the vote. Those in favour of PC motion 17? Those opposed? PC motion 17 has been defeated.

PC motion 18: Ms. Elliott.

Mrs. Christine Elliott: I move that section 12 of the bill be struck out and the following substituted:

"12(1) The definition of 'specimen collection centre' in section 5 of the Laboratory and Specimen Collection Centre Licensing Act is amended by striking out 'or' at the end of clause (b) and by adding the following clauses:

"(b.1) a place where a member of the College of Dietitians of Ontario is engaged in the practice of dietetics,

"(b.2) a place where a member of the College of Naturopaths of Ontario is engaged in the practice of naturopathy, or'

"(2) The definition of 'specimen collection centre' in section 5 of the act, as re-enacted by the Statutes of Ontario, 2007, chapter 10, schedule P, section 18, is

amended by striking out 'or' at the end of clause (b) and by adding the following clauses:

"(b.1) a place where a member of the College of Dietitians of Ontario is engaged in the practice of dietetics,

"'(b.2) a place where a member of the College of Naturopaths of Ontario is engaged in the practice of naturopathy, or."

This amendment again is supported by the Ontario Association of Naturopathic Doctors to make sure that they are able to perform and order lab testing for their patients.

I guess this is following on from the answer that we received previously. It is important to the naturopaths that they be able to order the same lab tests as medical doctors.

The Chair (Mr. Shafiq Qaadri): Are there any further comments?

Mr. Bas Balkissoon: The government can't support this motion, for the same reason as explained in motion 17.

The Chair (Mr. Shafiq Qaadri): Are there any further comments? Seeing none, we'll proceed to the vote. Those in favour of PC motion 18? Those opposed? PC motion 18 is defeated.

NDP motion 19: Madame Gélinas.

M^{me} France Gélinas: I'm going for all the marbles this time. I move that section 12 of the bill be struck out and the following substituted:

"12(1) The definition of 'specimen collection centre' in section 5 of the Laboratory and Specimen Collection Centre Licensing Act is amended by striking out 'or' at the end of clause (b) and by adding the following clauses:

"(b.1) a place where a member of the College of Dietitians of Ontario is engaged in the practice of dietetics.

"(b.2) a place where a member of the College of Midwives of Ontario is engaged in the practice of midwifery,

"'(b.3) a place where a member of the College of Naturopaths of Ontario is engaged in the practice of naturopathy, or'

"(2) The definition of 'specimen collection centre' in section 5 of the act, as re-enacted by the Statutes of Ontario, 2007, chapter 10, schedule P, section 18, is amended by striking out 'or' at the end of clause (b) and by adding the following clauses:

"(b.1) a place where a member of the College of Dietitians of Ontario is engaged in the practice of dietetics,

"(b.2) a place where a member of the College of Midwives of Ontario is engaged in the practice of midwifery,

"'(b.3) a place where a member of the College of Naturopaths of Ontario is engaged in the practice of naturopathy, or."

The Chair (Mr. Shafiq Qaadri): Any further comments?

M^{me} France Gélinas: Basically, I want to make sure that dietitians, naturopaths and midwives are able to practise to their full scope of practice. The entire reason why we have Bill 179 is to look at the scope of practice of the different professionals in the health care field in Ontario. In order for those professionals to do their work,

they need to have access to labs and to specimen collection. By not having this option, it really curtails how they're able to do their work.

Le Président (M. Shafiq Qaadri): Merci, madame Gélinas. Le plancher est à vous, monsieur Lalonde.

Mr. Jean-Marc Lalonde: Madame Gélinas, you referred twice to 12(1)(b.3), and also to subsection 2 at (b.3) again. We don't have that.

M^{me} France Gélinas: It's because it's being substituted.

Mr. Jean-Marc Lalonde: We haven't received that.

M^{me} France Gélinas: Pardon me?

Mr. Bas Balkissoon: Mr. Chair, has the clerk distributed that change? We don't have it.

M^{me} France Gélinas: It's a new section 12.

Mrs. Carol Mitchell: Oh, you have a new section.

M^{me} France Gélinas: I didn't think it was that new. We worked on it on Friday, if that helps.

Mr. Jean-Marc Lalonde: Okay, we're looking at the others that we have.

Mrs. Carol Mitchell: Okay.

The Chair (Mr. Shafiq Qaadri): We invite you to go through the package that was placed on your desk today, as opposed to the package that you received on Friday.

Mr. Jean-Marc Lalonde: We didn't get a chance to-

Mr. Bas Balkissoon: Mr. Chair, I wonder if we could take a short break so I could just consult on this addition, because I didn't have it walking in here.

The Chair (Mr. Shafiq Qaadri): Would 10 minutes be fine?

Mr. Bas Balkissoon: Five is fine.

The Chair (Mr. Shafiq Qaadri): Five minutes. Fine. A five-minute break, if that's the will of the committee?

M^{me} France Gélinas: It's fine with me.

The Chair (Mr. Shafiq Qaadri): Thank you. The committee recessed from 1450 to 1455.

The Chair (Mr. Shafiq Qaadri): We resume. As you realize, we have NDP motion 19 before the committee. I believe we all have the same text and copies now officially distributed. Are there any further comments on NDP motion 19? Mr. Balkissoon.

Mr. Bas Balkissoon: Mr. Chair, the added information causes the government some problems, so we will not be supporting it. It's the addition of the lab and specimen collection process previously described for naturopaths, so we'll be voting against it.

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The Chair (Mr. Shafiq Qaadri): Further comments? We'll proceed to the vote, then. Those in favour of NDP motion 19? Those opposed? NDP motion 19 is defeated.

Government motion 20: Mr. Balkissoon.

Mr. Bas Balkissoon: I move that section 12 of the bill be struck out and the following substituted:

"12(1) The definition of 'specimen collection centre' in section 5 of the Laboratory and Specimen Collection Centre Licensing Act is amended by striking out 'or' at the end of clause (b) and by adding the following clauses:

"(b.1) a place where a member of the College of Dietitians of Ontario is engaged in the practice of dietetics,

"(b.2) a place where a member of the College of Midwives of Ontario is engaged in the practice of midwifery, or'

"(2) The definition of 'specimen collection centre' in section 5 of the act, as reenacted by the Statutes of Ontario, 2007, chapter 10, schedule P, section 18, is amended by striking out 'or' at the end of clause (b) and by adding the following clauses:

"(b.1) a place where a member of the College of Dietitians of Ontario is engaged in the practice of dietetics,

"(b.2) a place where a member of the College of Midwives of Ontario is engaged in the practice of midwifery, or."

This motion complements the other motions within the bill and provides midwives with the authority to collect samples such as blood and urine for testing as part of their scope of practice.

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, we'll proceed with the vote. Those in favour of government motion 20? Those opposed? I declare government motion 20 to be carried.

Shall section 12, as amended, carry? Carried.

Mr. Balkissoon.

Mr. Bas Balkissoon: I move that subsections 7(1) and (2) of the Massage Therapy Act, 1991, as set out in subsection 13(2) of the bill, be struck out and the following substituted:

"Restricted titles

"(1) No person other than a member shall use the title 'massage therapist' or 'registered massage therapist,' a variation or abbreviation or an equivalent in another language.

"Representations of qualifications, etc.

"(2) No person other than a member shall hold himself or herself out as a person who is qualified to practise in Ontario as a massage therapist or registered massage therapist or in a specialty of massage therapy."

Stakeholders have highlighted this concern about protecting the name of massage therapists and registered massage therapists, and I believe this accomplishes that.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas?

M^{me} France Gélinas: I'm just curious to see which stakeholder asked for this amendment.

Mr. Bas Balkissoon: I believe when the staff had their stakeholder meetings with all the various groups, this was raised, and that's why it's here.

M^{me} France Gélinas: Okay, but which stakeholder was it?

Mr. Bas Balkissoon: If you give me a second, I'll be able to find out.

Interjection.

Mr. Bas Balkissoon: The College of Massage Therapists

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 21? Those opposed? Government motion 21 carries.

Shall section 13, as amended, carry? Carried. Section 14: NDP motion 22, Madame Gélinas.

M^{me} France Gélinas: I move that section 3 of the Medical Radiation Technology Act, 1991, as set out in section 14 of the bill, be struck out and the following substituted:

"Scope of practice

"3. The practice of medical radiation technology is the use of ionizing radiation, electromagnetism and other prescribed forms of energy for the purposes of diagnostic and therapeutic procedures, the evaluation of images and data relating to the procedures and the assessment of the condition of an individual related to the procedures."

The Chair (Mr. Shafiq Qaadri): Any further comments? Mr. Balkissoon?

Mr. Bas Balkissoon: I wonder if Madame Gélinas would be prepared to amend the last part of the last sentence such that it reads exactly like motion 23, which is a government motion. If she does, then we can support it and I'll withdraw 23.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas?

M^{me} **France Gélinas:** It will be a long enough afternoon. I have no problem with adding "before, during and after the procedures."

Mr. Bas Balkissoon: Actually, it's "and the assessment of an individual before, during and after the procedures." So after "procedures and," it should now read "the assessment of an individual before, during and after the procedures."

M^{me} France Gélinas: Okay.

The Chair (Mr. Shafiq Qaadri): We'll proceed, then, to the vote. Those in favour of the amendment to the amendment? Carried.

All those in favour of the amended amendment? Carried.

I congratulate you, Madame Gélinas. NDP motion 22 carries.

Government motion 23 has been dealt with.

We'll now proceed to government motion 24. Mr. Balkissoon.

Mr. Bas Balkissoon: I move that subsection 5(2) of the Medical Radiation Technology Act, 1991, as set out in section 14 of the bill, be amended by striking out "the member is ordered to perform the procedure" and substituting "the procedure is ordered."

Mr. Chair, this is a technical amendment. The motion's language is consistent with the language in the Regulated Health Professions Act, which says a procedure is ordered, not a member.

The Chair (Mr. Shafiq Qaadri): Thank you. Comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 24? Those opposed? Carried.

NDP motion 25. Madame Gélinas.

M^{me} France Gélinas: I move that section 5 of the Medical Radiation Technology Act, as set out in section 14 of the bill, be amended by adding the following subsection:

"Nurse practitioners

"(2.1) A member of the College of Nurses of Ontario who holds an extended certificate of registration under the Nursing Act, 1991, may order a member to perform anything that may be ordered under section 4."

Here again, this is the type of amendment that makes the work of a nurse practitioner on a day-to-day basis a lot more flow-through for the patients who are beneficiaries of their services.

The Chair (Mr. Shafiq Qaadri): Further comments? Mr. Balkissoon.

Mr. Bas Balkissoon: Mr. Chair, the government cannot support this motion. The effect of this would be to retain the status quo, wherein drugs that midwives may prescribe would continue to be set out in regulation.

Also, staff have some concerns with the use of the words—I can't read the writing here, the background that goes with it. Excuse me for one second.

Sorry, Mr. Chair. Pardon my explanation. I was on the wrong notes that I have here.

Again, it would be the statement previously made: You cannot order a member; the procedure is ordered. So this is why the government cannot support the wording in this particular motion.

The Chair (Mr. Shafiq Qaadri): Are there any further comments?

M^{me} France Gélinas: So you would like to see "may order the procedures to be performed, as set out under section 4"?

Mr. Bas Balkissoon: Again, let me just consult with the staff on this.

No, actually, the wording is incorrect, and also the permissions being granted cannot be supported at this time because it's something that would have to be reviewed and everyone consulted.

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M^{me} France Gélinas: What permissions do you figure are being asked to be granted?

Mr. Bas Balkissoon: I guess it's the procedure that you're requesting the nurses to have permission to do.

The Chair (Mr. Shafiq Qaadri): Impasse. Further questions, clarifications, ministerial summoning, legislative counsel, commentary: What would you like to happen?

M^{me} France Gélinas: Are you asking me?

The Chair (Mr. Shafiq Qaadri): Or generally, yes.

All right. We'll move on, then, if that's suitable. We'll proceed now to the vote on NDP motion 25. Those in favour of NDP motion 25? Those opposed? NDP motion 25 is defeated.

Shall section 14, as amended, carry? Carried.

Section 15: No motions have been received to date. Shall section 15 carry? Carried.

Section 16: NDP motion 26. Madame Gélinas.

M^{me} France Gélinas: I move that subsections 11(3) to (6) of the Midwifery Act, 1991, as set out in subsection 16(4) of the bill, be struck out and the following substituted:

"Incorporation by reference

"(3) A regulation made under clause (1)(a), (b) or (c) may adopt, by reference, in whole or in part, and with such changes are considered necessary, one or more documents setting out categories of drugs or substances.

"Rolling incorporation

"(4) If a regulation provided for in subsection (3) so provides, a document adopted by reference shall be a reference to it as amended from time to time after the making of the regulation."

Basically, what this is trying to do is to change the way midwives can prescribe medication and to go to categories of drugs instead of lists of drugs. I think many colleges, associations and professionals made compelling arguments as to why prescribing from a list is very problematic and does not lead to good patient care for the midwives. They're not asking for open prescribing; they are asking for categories of drugs that have to do with their line of work. This would make the work that they provide to the people of Ontario, especially women and their babies, a lot better.

The Chair (Mr. Shafiq Qaadri): Further comments? Mr. Bas Balkissoon: The effect of the motion would be to retain the status quo wherein drugs that midwives may prescribe would continue to be set out in regulation. You will see that some of the amendments that will come later on in Bill 179 which are being proposed would enable the list to be maintained outside of regulation, which would increase significant speed-up to the approval of drugs that they can prescribe. This is in response to the stakeholders making those comments during our hearings, so I think you will see that some of the government's motions later on provide this particular opportunity with much more flexibility.

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, we'll proceed with the vote. Those—

M^{me} France Gélinas: I would say that one has to take a leap of faith that having a list made outside of regulation would go faster. This is something that would have to be proven. Giving them, at this point, categories of drugs does not prevent one from having a list made outside of regulation; it just makes the bill, which does not get looked at very often, set out a framework so that those professionals have the drugs needed to do their work.

The Chair (Mr. Shafiq Qaadri): Any further comments before the vote? We'll proceed, then, to NDP motion 26. Those in favour? Those opposed? NDP motion 26 is defeated.

NDP motion 27: Madame Gélinas.

M^{me} France Gélinas: I move that subsection 11(4) of the Midwifery Act, 1991, as set out in subsection 16(4) of the bill, be amended by adding "including amendments made by the college without reference to the expert committee" at the end.

The Chair (Mr. Shafiq Qaadri): Comments?

Mr. Bas Balkissoon: The government cannot support this motion. It is inconsistent with the process proposed by the government as part of the bill for approval of drugs which regulated health professions may prescribe, dispense, compound or sell while engaged in the practice of their profession. It would be inappropriate to make this particular amendment in the Midwifery Act, 1991, alone.

The Chair (Mr. Shafiq Qaadri): Any further comments? Those in favour of NDP motion 27? Those opposed? NDP motion 27 is defeated.

NDP motion 28.

M^{me} France Gélinas: I wish not to present.

The Chair (Mr. Shafiq Qaadri): NDP motion 28 is withdrawn. Thank you, Madame Gélinas.

Shall section 16 carry? Carried.

Section 17, PC motion 29: Ms. Elliott.

Mrs. Christine Elliott: I move that section 17 of the bill be amended by adding the following subsections:

"(0.1) The definition of 'college' in section 1 of the Naturopathy Act, 2007 is repealed and the following substituted:

""College" means the College of Naturopathic Doctors of Ontario';

"(0.2) The definition of 'college' in subsection 2(1) of the Naturopathy Act, 2007 is repealed and the following substituted:

""'College" means the College of Naturopathic Doctors of Ontario';

"(0.3) Paragraph 5 of subsection 4(1) of the act is amended by striking out 'naturopathic.'

"(0.4) Subsection 4(1) of the act is amended by adding the following paragraphs:

"7. Prescribing, dispensing, selling or compounding drugs as designated in the regulations.

"8. Ordering diagnostic ultrasound and other prescribed forms of energy used for diagnostic purposes."

"(0.5) Section 5 of the Act is repealed and the following substituted:

"College established

"5. The college is established under the name College of Naturopathic Doctors of Ontario in English and Ordre des docteures en naturopathies de l'Ontario in French."

These amendments were proposed by the Ontario Association of Naturopathic Doctors and achieve several purposes. One is, it adds the full controlled act of prescribing, dispensing, selling and compounding to the Naturopathy Act to ensure that naturopathic doctors and their patients have full access to restricted therapeutic natural substances, crash-cart medications and a limited range of primary care substances. It also allows naturopathic doctors to order forms of diagnostic energy, and finally, it renames the College of Naturopathic Doctors of Ontario to avoid confusion with the College of Nurses and to reflect the title designated to the profession in the RHPA. This will allow naturopathic doctors to work to the full scope of their profession.

The Chair (Mr. Shafiq Qaadri): As Chair, I once again inform the committee that PC motion 29 is out of order.

Mrs. Elizabeth Witmer: Mr. Chair, I'd ask for unanimous consent to open this section of the act.

The Chair (Mr. Shafiq Qaadri): Ms. Witmer has asked for unanimous consent to open this section of the act. Do I have unanimous consent for this? I do not see unanimous consent, Ms. Witmer, and therefore I continue to rule this motion out of order.

We'll proceed to the next motion, NDP motion 30: Madame Gélinas.

M^{me} **France Gélinas:** I move that section 17 of the bill be amended by adding the following subsections:

"(0.1) The Naturopathy Act, 2007 is amended by striking out 'College of Naturopaths of Ontario' wherever it appears and substituting 'College of Naturopathic Doctors of Ontario' in each case.

"(0.2) Subsection 4(1) of the act is amended by striking out 'naturopathic diagnosis' and substituting 'diagnosis' in paragraph 5 and by adding the following paragraphs:

"7. Prescribing, dispensing, compounding or selling a drug designated in the regulations.

"8. Ordering diagnostic energy and other forms of energy for diagnostic purposes."

"(0.3) Section 11 of the act is amended by adding the following clause:

""(g) designating the drugs that a member may prescribe, dispense, compound or sell for the purpose of paragraph 7 of subsection 4(1), prescribing the purposes for which, or the circumstances in which, they may be prescribed, dispensed, compounded or sold and prohibiting the prescribing, dispensing, compounding or selling of drugs other than the ones designated.""

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The Chair (Mr. Shafiq Qaadri): Before you proceed, Madame Gélinas, I would also again, as Chair, advise the committee that this motion is out of order. So we'll dispose of that.

I would now invite the government to please present motion 31.

Mr. Bas Balkissoon: I move that section 17 of the bill be amended by adding the following subsections:

"(0.1) Subsection 4(1) of the Naturopathy Act, 2007 is amended by adding the following paragraph:

"7. Prescribing, dispensing, compounding or selling a drug designated in the regulations."

"(0.2) Section 11 of the act is amended by adding the following clause:

"(g) designating the drugs that a member may prescribe, dispense, compound or sell for the purpose of paragraph 7 of subsection 4(1), prescribing the purposes for which, or the circumstances in which, the designated drugs may be prescribed, dispensed, compounded, or sold and prohibiting the prescribing, dispensing, compounding or selling of drugs other than the ones designated."

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon, before you proceed I also advise you that this motion is out of order.

Mr. Bas Balkissoon: I wonder if we could have unanimous consent to at least allow it, because it was requested by the stakeholder.

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon asks for unanimous consent. Do I have unanimous consent to open the act? I see unanimous consent. You may proceed, Mr. Balkissoon.

Mr. Bas Balkissoon: This motion will allow naturopaths to provide the services consistent with their current scope of practice once they're registered under the Naturopathy Act, 2007, and I think we would accomplish what was requested by the organization.

The Chair (Mr. Shafiq Qaadri): Are there any further comments? Madame Gélinas?

M^{me} France Gélinas: Now that the act is open, can we go back?

The Chair (Mr. Shafiq Qaadri): We would need unanimous consent to do so.

M^{me} France Gélinas: There's always a trick, isn't there?

The Chair (Mr. Shafiq Qaadri): Are there any further comments? I proceed then to the vote on government motion 31. Those in favour? Those opposed? Government motion 31 is carried.

Shall section 7, as amended, carry? Carried.

Section 18: PC motion 32.

Mrs. Christine Elliott: I move that section 18 of the bill be amended by adding the following subsection:

"(1.1) Section 4 of the act is amended by adding the following paragraph:

"5. Dispensing a drug."

This amendment was proposed by the College of Nurses of Ontario to grant nurses access to the control of active dispensing when the drug is prescribed by an authorized prescriber. Rather than relying on the delegation process, it will enable the College of Nurses of Ontario to address the activity comprehensively in its standards of practice and through its QA program in order to better fulfill its public protection mandate.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Mrs. Elizabeth Witmer: I think it's important to also emphasize here that this amendment had actually been recommended by HPRAC and I do fully support it.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Mr. Bas Balkissoon: This motion is exactly as the government motion number 33. So, we'll be supporting it and we'll withdraw number 33.

The Chair (Mr. Shafiq Qaadri): Those in favour of PC motion 32? Those opposed? Carried. I congratulate the Conservative caucus for their motion.

I would now invite PC motion 34: Ms. Elliott.

Mrs. Christine Elliott: I move that section 18 of the bill be amended by adding the following subsection:

"(1.1) Section 4 of the act is amended by adding the following paragraphs:

"5. In the case of a member who is a registered nurse, dispensing, compounding and selling drugs.

"6. In the case of a member who is a registered practical nurse, dispensing drugs.

"7. In the case of a member who is a registered nurse, communicating a diagnosis.

"8. In the case of a member who is a registered nurse, ordering the application of a prescribed form of energy.

"9. In the case of a member who is a registered nurse and who has the appropriate education, knowledge and competencies, setting and casting simple fractures and dislocations."

Again, this is submitted by the Registered Nurses' Association of Ontario, recommended by them. According to the RNAO's written submission, Bill 179, as it is currently written, represents a major lost opportunity to update RNs' and RPNs' scope of practice. So I hope that it will result in benefits, including increased patient access to quality and timely care and decreased administrative costs associated with the delegation of acts that should be within the scope of nursing.

The Chair (Mr. Shafiq Qaadri): Further comments? Madame Gélinas?

M^{me} France Gélinas: I support the range of additional authority for registered nurses and registered practical nurses

I don't know when to raise this, but I believe that amendment 35 is identical.

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon?

Mr. Bas Balkissoon: The government can't support this motion because we're going to be introducing a motion to authorize registered nurses and registered practical nurses to dispense drugs. Unfortunately, items 7 and 8 need to be reviewed in consultation with the various stakeholders, and item 9—I believe they're allowed that practice today. So the government side will be opposing this motion.

The Chair (Mr. Shafiq Qaadri): Any further comments? We'll proceed to the vote. Those in favour of PC motion 34? Those opposed? PC motion 34 is defeated.

I rule NDP motion 35 out of order, so we'll now proceed to PC motion 36.

Mrs. Christine Elliott: I move that section 18 of the bill be amended by adding the following subsection:

"(1.1) Section 4 of the act is amended by adding the following subsection:

"Certain acts authorized despite regulations

"(2) Despite anything in any regulation,

""(a) a member who is a registered nurse and who holds an extended certificate of registration in accordance with the regulations may admit, treat and discharge patients in public hospitals in in-patient settings, and a physiotherapist may initiate or order treatments or diagnostic procedures in hospitals;

""(b) a member who is a registered nurse and who holds an extended certificate of registration in accordance with the regulations may certify deaths in public

hospitals;

""(c) a member who is a registered nurse and who holds an extended certificate of registration in accordance with the regulations may order electromagnetism for magnetic resonance imaging and any form of diagnostic ultrasound;

""(d) a member who is a registered nurse may order the application of electricity for fibrillation, cardiac pacemaker therapy, cardioversion, defibrillation, electrocoagulation, fulguration and transcutaneous cardiac pacing.""

Again, this was an amendment that was requested by the Registered Nurses' Association of Ontario. The regulation which governs the application of energy must be updated, as with the various other matters that are noted here, and it's the intent of this motion to do this updating.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas,

then Mr. Balkissoon.

M^{me} France Gélinas: I support the range of additional authority for nurse practitioners and registered nurses, and also the one specific to physiotherapists regarding initiating and ordering diagnostic procedures in hospital.

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon and

then Ms. Witmer.

Mr. Bas Balkissoon: This motion relates to matters which are more appropriately addressed in regulations under the RHPA and the Public Hospitals Act and, as such, the government does not support the motion.

The Chair (Mr. Shafiq Qaadri): Ms. Witmer.

Mrs. Elizabeth Witmer: I just want to be on the record as indicating that I strongly support this amendment.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll proceed to the vote. Those in favour of PC motion 36? Those opposed? PC motion 36 is defeated.

NDP motion 37.

M^{me} France Gélinas: I move that section 18 of the bill be amended by adding the following subsection:

"(1.1) Section 4 of the act is amended by adding the following subsection:

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"Certain activities authorized despite other laws

- "(2) Despite anything in any other act, regulation or law,
- ""(a) a member who is a registered nurse and who holds an extended certificate of registration in accordance with the regulations may conduct assessments of clients' fitness to drive for the purposes of the Highway Traffic Act;
- ""(b) a member who is a registered nurse and who holds an extended certificate of registration in accordance with the regulations may complete and sign a form 1 (application for psychiatric assessment) for the purposes of the Mental Health Act;

""(c) a member who is a registered nurse and who holds an extended certificate of registration in accordance with the regulations may admit, treat and discharge patients in public hospitals in in-patient settings;

"(d) a member who is a registered nurse and who holds an extended certificate of registration in accordance with the regulations may certify deaths in public hospitals:

"(e) a member who is a registered nurse and who holds an extended certificate of registration in accordance

with the regulations may order electromagnetism for magnetic resonance imaging and any form of diagnostic ultrasound;

""(f) a member who is a registered nurse or a registered nurse who holds an extended certificate of registration in accordance with the regulations may order the application of electricity for fibrillation, cardiac pacemaker therapy, cardioversion, defibrillation, electrocoagulation, fulguration and transcutaneous cardiac pacing;

""(h) a specialist or hospital may claim consultations fees for patient referrals and orders made directly by a member who is a registered nurse who holds an extended certificate of registration in accordance with the regu-

ations

""(i) a member who is a registered nurse and who holds an extended certificate of registration in accordance with the regulations may order the restraint or confinement of a client in a hospital or facility or to use a monitoring device on such a client for the purposes of the Patient Restraint Minimization Act, 2001;

"(j) a member who is a registered nurse and who holds an extended certificate of registration in accordance with the regulations may sign seat belt exemptions for the

purposes of the Highway Traffic Act."

The Chair (Mr. Shafiq Qaadri): Further comments? Mr. Balkissoon.

Mr. Bas Balkissoon: The government does not support this motion, as the amendments within this motion may impact a number of Ontario statutes which are administered by different ministries. I was hoping you'd rule it out of order, but we'd have to vote against it.

The Chair (Mr. Shafiq Qaadri): Any further comments? We'll proceed to the vote. Those in favour of NDP motion 37? Those opposed? NDP motion 37 is defeated.

PC motion 38: Ms. Elliott.

Mrs. Christine Elliott: I move that paragraph 4 of subsection 5.1(1) of the Nursing Act, 1991, as set out in subsection 18(2) of the bill, be amended by adding "as long as the person has the appropriate training and certification in the application of specialized forms of energy from a recognized post-secondary institution or its equivalent" at the end.

This amendment was suggested by the Canadian Society of Diagnostic Medical Sonographers just to indicate that as long as the nurse practitioner has the appropriate training, they do not have any problem with them ordering these tests.

The Chair (Mr. Shafiq Qaadri): Any further comments? Mr. Balkissoon.

Mr. Bas Balkissoon: This matter relates more and is appropriately addressed in regulations under the Nursing Act. As such, the government can't support it.

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, we'll proceed to the vote. Those in favour of PC motion 38? Those opposed? PC motion 38 is defeated.

PC motion 39, Ms. Elliott.

Mrs. Christine Elliott: I move that the following amendments be made to section 5.1 of the Nursing Act, 1991, as set out in subsection 18(2) of the bill:

(1) That paragraphs 6, 7 and 8 of subsection (1) be struck out and the following substituted:

"6. Administering substances by injection or inhalation.

"7. Prescribing, dispensing, selling or compounding drugs.

"8. Ordering oxygen, blood and blood products."

(2) That subsection (2) be struck out.

There were several groups that made recommendations for this amendment. The Nurse Practitioners' Association of Ontario, the College of Nurses of Ontario and the Registered Nurses' Association of Ontario proposed this amendment to broaden the authority of nurse practitioners to include ordering oxygen, blood and blood products, to authorize nurse practitioners for open prescribing and removing existing barriers to administering substances by injection or inhalation. The association says that without these changes, Ontario will continue to lag behind other jurisdictions and these amendments are necessary to allow them to do their jobs efficiently.

The Chair (Mr. Shafiq Qaadri): Comments? Mr. Balkissoon and Madame Gélinas.

Mr. Bas Balkissoon: We can't support the motion, because the government will be introducing a motion to provide nurse practitioners with broader authority to prescribe, dispense, sell and compound drugs and administer substances by injection or inhalation. So we'll be supporting our motion, and we'll be voting against this one.

M^{me} France Gélinas: I think the next motion, motion 40 from the NDP, is aiming to do the same thing as the motion from the Conservative Party but it's worded slightly differently, so I certainly support their motion and the rationale for it.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote. Those in favour of PC—

Mrs. Elizabeth Witmer: Recorded vote.

The Chair (Mr. Shafiq Qaadri): We'll have a recorded vote.

Ayes

Elliott, Gélinas, Witmer.

Nays

Balkissoon, Dhillon, Lalonde, Mitchell.

The Chair (Mr. Shafiq Qaadri): I declare PC motion 39 to have been defeated. I also inform the committee that NDP motion 40 is out of order.

We'll proceed now to government motion 41: Mr. Balkissoon.

Mr. Bas Balkissoon: I move that paragraphs 6 and 8 of subsection 5.1(1) of the Nursing Act, 1991, as set out

in subsection 18(2) of the bill, be struck out and the following substituted:

"6. Administering a substance, by injection or inhalation in accordance with the regulations.

"8. Prescribing, dispensing, selling or compounding a drug in accordance with the regulations."

As I stated before, this provides nurse practitioners with the broader authority to prescribe, dispense, sell and compound drugs and administer substances by injection or inhalation, and I believe it responds to the request by the nursing association.

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll now proceed with the vote. Those in favour of government motion 41? Those opposed? Motion 41 carried.

Government motion 42.

Mr. Bas Balkissoon: I move that subsection 5.1(2) of the Nursing Act, 1991, as set out in subsection 18(2) of the bill, be struck out and the following substituted:

"Further restrictions on authorized act

"(2) A member shall not perform a procedure under paragraph 7 of subsection (1) unless the procedure has been ordered by a member of the College of Physicians and Surgeons of Ontario or a member of any other college who is authorized to order the procedure."

This is a technical amendment, and the language in the motion is consistent with the RHPA.

The Chair (Mr. Shafiq Qaadri): Comments? Seeing none, we'll now proceed to the vote. Those in favour of government motion 42? Those opposed? Motion 42 is carried.

PC motion 43: Ms. Elliott.

Mrs. Christine Elliott: I move that that clauses 14(1)(c), (d) and (e) and subsections 14(2) to (6) of the Nursing Act, 1991, as set out in subsection 18(6) of the bill, be struck out.

The purpose of this amendment, which was, again, put forward by the Registered Nurses' Association of Ontario, the Nurse Practitioners' Association of Ontario and the College of Nurses of Ontario, is to remove restrictions to prescribing drugs for nurse practitioners. Again, it's the idea that it's not possible to create a comprehensive, up-to-date list, so this simply makes it more open and more responsive to the needs of patients.

The Chair (Mr. Shafiq Qaadri): Comments?

Mr. Bas Balkissoon: The government cannot support this motion because the government will be introducing a motion which enhances and strengthens the authority for the College of Nurses of Ontario to make regulations governing the prescribing, dispensing, selling and compounding of drugs and the administration of substances by injection and/or inhalation by nurse practitioners.

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, we'll proceed to the vote. Those in favour of PC motion 43? Those opposed? PC motion 43 is defeated.

NDP motion 44: Madame Gélinas.

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M^{me} France Gélinas: I move that subsection 18(6) of the bill be struck out.

The Chair (Mr. Shafiq Qaadri): Comments?

Mr. Bas Balkissoon: The government cannot support this motion as it restricts the college's authority to make certain regulations with respect to the performance of controlled acts by all nurses, including registered nurses and registered practical nurses.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Mme France Gélinas: Basically what this motion is trying to do is eliminate references to nurse practitioners having to prescribe from a list. The body of evidence that this does not serve the public of Ontario well is huge, and action has to be taken. Bill 179 is one such opportunity to take action.

The Chair (Mr. Shafiq Qaadri): Further comments? NDP motion 44: those in favour? Those opposed? NDP motion 44 is defeated.

Government motion 45: Mr. Balkissoon.

Mr. Bas Balkissoon: Ms. Mitchell will take 45.

Mrs. Carol Mitchell: I move that section 14 of the Nursing Act, 1991, as set out in subsection 18(6) of the bill, be struck out and the following substituted:

"Regulations

"14. Subject to the approval of the Lieutenant Governor in Council and with prior review by the minister, the council may make regulations,

"(a) prescribing procedures for the purpose of para-

graph 1 of section 4:

"(b) permitting a member to perform a procedure under clause 5(1)(a) and governing the performance of the procedure, including, without limiting the foregoing, prescribing the class of members that can perform the procedure and providing that the procedure may only be performed under the authority of a prescribed member or a member of a prescribed class;

"(c) regulating and governing the administering of substances by members by injection or inhalation under paragraph 6 of subsection 5.1(1), the prescribing, dispensing, compounding and selling of drugs by members in the course of engaging in the practice of nursing and ancillary matters, including, without limiting the generality of the foregoing.

"(i) governing the purposes for which, or the circumstances under which, substances may be administered by injection or inhalation and drugs may be prescribed, dispensed, compounded or sold,

"(ii) setting requirements respecting the administration of substances by injection or inhalation and the prescribing, dispensing, compounding and selling of drugs,

"(iii) governing and regulating the storage, handling, display, identification, labelling and disposal of substances that may be administered by injection or inhalation and of drugs,

"(iv) setting prohibitions, including prohibitions respecting the substances that may be administered by injection or inhalation and the drugs that may be prescribed, dispensed, compounded and sold,

"(v) requiring members to keep records respecting the administering of substances by injection or inhalation and the prescribing, dispensing, compounding and selling of drugs and providing for the contents of those records.

"(vi) requiring members to provide the college or the minister with reports respecting the administering of substances by injection or inhalation and the prescribing, dispensing, compounding and selling of drugs and providing for the contents of those reports;

"(d) prescribing standards of practice respecting the circumstances in which registered nurses who hold an extended certificate of registration should consult with

members of other health professions."

The Chair (Mr. Shafiq Qaadri): Are there any further comments?

Mme France Gélinas: I think I've already spoken about the need for nurse practitioners to have open prescribing. Basically, all this amendment does is allow open prescribing to be brought forward into regulation. It does not give nurse practitioners open prescribing, which is what they need.

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 45? Those opposed? Carried.

Shall section 18, as amended, carry? Carried. Section 19, NDP motion 46: Madame Gélinas.

M^{me} France Gélinas: I do not wish to present it.

The Chair (Mr. Shafiq Qaadri): We have NDP motion 46 withdrawn.

NDP motion 47.

M^{me} France Gélinas: I move that section 19 of the bill be amended by adding the following subsection:

"(7.1) Section 16 of the act is amended by adding 'or registered nurse in the extended class' after 'physician' wherever it occurs, and 'registered nurses in the extended class' after 'physicians' wherever it occurs."

The Chair (Mr. Shafiq Qaadri): Madame Gélinas, I inform you that this motion is out of order. We'll dispose, therefore, of NDP motion 47.

Shall section 19 carry? Section 19 carries.

We'll now proceed to section 20. NDP motion 48: Madame Gélinas.

M^{me} France Gélinas: I move that subsections 12(3) to (6) of the Optometry Act, 1991, as set out in subsection 20(2) of the bill, be struck out.

Basically, that would permit optometrists to prescribe from categories of drugs rather than off of a list.

The Chair (Mr. Shafiq Qaadri): Comments?

Mr. Bas Balkissoon: The government does not support this motion. We believe it is inconsistent with the process proposed by the government as part of the bill for the approval of drugs which regulated health professionals may prescribe, dispense, compound or sell while engaged in the practice of their profession.

The Chair (Mr. Shafiq Qaadri): Any further

comments?

M^{me} France Gélinas: Optometrists, like every other professional who's restricted to prescribing from a list, have been plagued by very long delays in getting drugs approved. To this day, optometrists still cannot approve drugs that would benefit the people of Ontario.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote, then. NDP motion 48: those in favour? Those

opposed? NDP motion 48 is defeated.

Shall section 20 carry? Section 20 carries.

NDP motion 49.

M^{me} **France Gélinas:** I move that section 3 of the Pharmacy Act, 1991, as set out in subsection 21(1) of the bill, be amended by adding the following subsection:

"Marketing campaigns

"(2) The college shall develop standards to assure that the public can distinguish between a commercial marketing campaign and legitimate health promotion and education."

Basically, it is to protect patient safety and prevent

commercial gains over public health.

Mr. Bas Balkissoon: This motion would require the Ontario College of Pharmacists to develop standards to distinguish between a commercial marketing campaign and legitimate health promotion education. The Ontario College of Pharmacists currently has regulations and standards of practice in place to address this matter.

Additionally, the motion would put the OCP in the role of monitoring all advertising campaigns. The term "market" could be read very broadly, which would be beyond the OCP's current mandate. As such, the gov-

ernment is opposed to this motion.

The Chair (Mr. Shafiq Qaadri): Any further comments?

M^{me} France Gélinas: The arguments against it are kind of weird because the College of Pharmacists already has the privilege of doing this. What we're saying is, now the law will obligate them to distinguish between commercial marketing and health promotion campaigns. They can already do this. All we're asking is to make it an obligation.

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, we'll proceed to the vote. Those in favour of NDP motion 49? Those opposed? Motion 49

is defeated.

NDP motion 50: Madame Gélinas.

Mme France Gélinas: I move that subsection 4(1) of the Pharmacy Act, 1991, as set out in subsection 21(2) of the bill, be amended by adding the following paragraphs:

"3.1 Prescribing for the treatment of minor ailments as specified in the regulations.

"3.2 Performing routine immunization.

"3.2 Prescribing schedule I products for travel

prophylaxis.

"3.3 Prescribing schedule II, III, and unscheduled products for the purposes of chronic disease management and monitoring."

There's a typo in the numbering.

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The Chair (Mr. Shafiq Qaadri): Comments?

Mr. Bas Balkissoon: Bill 179 proposes that the Ontario College of Pharmacists will have the authority to make regulations with respect to prescribing under the Pharmacy Act, 1991, where these matters are more appropriately dealt with. The statutory amendments within the motion remove any flexibility the college may have in developing regulations which allow for appropriate consultation with stakeholders and which would allow for optimum public protection. The government believes that this type of motion is better dealt with in regulations and, as such, we oppose the motion.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote. Those in favour of NDP motion 50? Those opposed? Motion 50 is defeated.

NDP motion 51.

M^{me} France Gélinas: I move that the following subsection be added to section 4 of the Pharmacy Act, 1991, as set out in subsection 21(2) of the bill:

"Pharmacists in hospitals

"(4) Despite anything in any regulation under the Public Hospitals Act, pharmacists practising in hospitals have the same range of authority as any other pharmacist."

This is basically to ensure that pharmacists practising in hospitals have the same authority as pharmacists elsewhere.

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon.

Mr. Bas Balkissoon: The government does not support this motion as it addresses matters more appropriately dealt with in regulations under the Public Hospitals Act. The government is already considering possible amendments to the regulations under the PHA to authorize certain professionals to deliver certain health care services in hospitals. Further policy and legal review of these issues is therefore required and, as such, we'll be opposing the motion.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote, then. NDP motion 51: Those in favour? Those opposed? NDP motion 51 is defeated.

Shall section 21 carry? Carried.

Section 22, PC motion 52: Mrs. Elliott.

Mrs. Christine Elliott: I move that subsection 4(3) of the Physiotherapy Act, 1991, as set out in subsection 22(2) of the bill, be amended by striking out "unless the member has been ordered to perform the procedure by" and substituting "unless the procedure has been ordered by."

This amendment was put forward by the College of Physiotherapists of Ontario because they're concerned about the way that subsection 4(3) in the act is written. In the college's submission to HPRAC and HPRAC's advice to the minister, the proposed additional requirement relating to the authorized act of administering a substance by inhalation was that the substance be ordered, but the way that it ended up being drafted was that physiotherapists be ordered to administer the substance. So it just changes the wording to concur with what was proposed by the college in the first place.

The Chair (Mr. Shafiq Qaadri): Comments? Ms. Gélinas, then Mr. Balkissoon.

M^{me} France Gélinas: Amendment 53 that the NDP has put forward is identical, so I will be supporting her motion.

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon.

Mr. Bas Balkissoon: Government motion 54 is identical to 52 and 53, so I think we'll be supporting the motion.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote. Those in favour of PC motion 52? None opposed. PC motion 52 is carried.

For the reasons that you've just cited, NDP motion 53 and government motion 54 are out of order and disposed of

Shall section 22, as amended, carry? Carried.

Section 23, NDP motion 55.

M^{me} **France Gélinas:** I move that section 23 of the bill be amended by adding the following subsection:

"(0) Section 5 of the act is repealed and the following substituted:

"College established

"5. The college is established under the name College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario in English and Ordre des psychothérapeutes autorisés et des thérapeutes autorisés en santé mentale de l'Ontario in French."

Le Président (M. Shafiq Qaadri): Je regrette, madame Gélinas, de vous informer que votre motion n'est pas à l'ordre. It's out of order.

We will now proceed to—pardon me?

Mr. Bas Balkissoon: Sorry; go ahead. Just a comment on the motion.

The Chair (Mr. Shafiq Qaadri): As it's out of order, we respectfully decline.

Government motion 56: Monsieur Lalonde.

Mr. Jean-Marc Lalonde: I move that section 23 of the bill be amended by adding the following subsections:

"(0.1) The definition of 'college' in section 1 of the Physiotherapy Act, 2007 is repealed and the following substituted:

""College" means the College of Registered Physiotherapists and Registered Mental Health Therapists of Ontario; ("Ordre")

"(0.2) The definition of 'college' in subsection 2(2) of the act is repealed and the following substituted:

""College" means the College of Registered Physiotherapists and Registered Mental Health Therapists of Ontario; ("Ordre")'

"(0.3) Section 5 of the act is repealed and the following substituted:

"College established

"5. The college is established under the name College of Registered Physiotherapists and Registered Mental Health Therapists of Ontario in English and Ordre des psychothérapeutes autorisés et des thérapeutes autorisés en santé mentale de l'Ontario in French."

Le Président (M. Shafiq Qaadri): Merci, monsieur Lalonde. Encore une fois, je regrette de vous informer que votre motion 56 n'est pas à l'ordre—out of order and officially now disposed of.

Mr. Bas Balkissoon: Mr. Chair, I wonder if we could have all-party consent to proceed with this motion.

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon has invited the committee to consider all-party consent or, rather, a unanimous decision. Do I have unanimous consent? I have unanimous consent.

Mr. Balkissoon, you may proceed, then. Any further comments?

Mr. Bas Balkissoon: Mr. Chair, I just wanted to make one correction. Mr. Lalonde said "physiotherapists." It should be "psychotherapist" whenever he said "physiotherapist."

Le Président (M. Shafiq Qaadri): C'est une question de prononciation. Vous avez raison; c'est « psychothérapeutes ».

Mr. Bas Balkissoon: This motion is necessary to reflect the professional titles.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll proceed to the vote. Those in favour of government motion 56? All in favour? Carried.

Government motion 57.

Mr. Bas Balkissoon: I move that subsections 8(1) and (2) of the Psychotherapy Act, 2007, as set out in section 23 of the bill, be struck out and the following substituted:

"Restricted titles

"(1) No person other than a member shall use the title 'psychotherapist,' 'registered psychotherapist' or 'registered mental health therapist,' a variation or abbreviation or an equivalent in another language.

"Representations of qualifications, etc.

"(2) No person other than a member shall hold himself or herself out as a person who is qualified to practise in Ontario as a psychotherapist, registered psychotherapist or registered mental health therapist."

Many of the stakeholders had highlighted this as a concern, and this motion is necessary to address that particular issue.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas?

M^{me} France Gélinas: Just a question. What would happen to, let's say, a social worker who's working for the children's aid society? They do psychotherapy. How would that play out for them?

Mr. Bas Balkissoon: I believe that in the act that governs social workers—there are, if I remember correctly, further amendments in the motions that are in front of us to deal with that particular issue, because that would come under a different act. We're dealing with the Psychotherapy Act here.

M^{me} France Gélinas: Yeah, I realize. Okay. Well, let's just say that they're not social worker members of the college. They are workers who work for the children's aid society.

Mr. Bas Balkissoon: But they would be a member of the college of social workers. They would be governed under that particular college. The college will determine if the person is certified to practise as a psychotherapist, and their certification will clearly indicate that.

colleges.

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The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, we'll proceed to the vote.

All those in favour of government motion 57? Those opposed? Government motion 57 is carried.

Shall section 23, as amended, carry? Carried.

A proposal for a new section, 23.1: NDP motion 58.

M^{me} France Gélinas: I move that the bill be amended by adding the following section:

"23.1 Subsection 35(1) of the Public Hospitals Act is repealed and the following substituted:

"Interprofessional advisory committee

"(1) Every board shall establish an interprofessional advisory committee composed of members that represent all regulated health professionals involved in interprofessional practice in the hospital setting."

What happens right now is, we have a medical advisory committee, and we would like this to be enlarged so that membership from all regulated professionals practising in hospitals could sit on the advisory committee.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas, before we proceed, I once again inform you that NDP motion 58 is out of order.

M^{me} France Gélinas: May I ask for unanimous consent?

The Chair (Mr. Shafiq Qaadri): You may certainly ask for unanimous consent.

Madame Gélinas has asked for unanimous consent.

Mr. Bas Balkissoon: Mr. Chair, we cannot support this at the time, because it's the Public Hospitals Act and it's not before us.

The Chair (Mr. Shafiq Qaadri): I do not have unanimous consent.

I'll proceed to NDP motion 59.

M^{mè} France Gélinas: I move that the bill be amended by adding the following section:

"23.1 The Public Hospitals Act is amended by adding the following section:

"Midwives

"35.1 Midwives shall participate fully in the medical advisory committee and all other decision-making committees at the hospital."

The Chair (Mr. Shafiq Qaadri): Again, before proceeding, I inform you, avec le regret, that NDP motion 59 is out of order.

I will now proceed to section 24. PC motion 60: Madame Elliott.

Mrs. Christine Elliott: I move that subsection 24(2) of the bill be struck out.

This is in response to the opposition that we heard from numerous professional colleges with respect to the concept of a college supervisor. They felt that this was really detrimental to the whole concept of self-regulation and asked that all provisions relating to the appointment of a college supervisor be removed entirely.

The Chair (Mr. Shafiq Qaadri): Comments? Mr. Balkissoon?

Mr. Bas Balkissoon: We cannot support the motion as the government will be introducing a motion to amend

the provisions in the bill which pertain to the appointment of a college supervisor.

The Chair (Mr. Shafiq Qaadri): Ms. Witmer?

Mrs. Elizabeth Witmer: I think this was probably the one amendment that came as a complete shock to most of the colleges and the professionals who came before this committee. There certainly was no explanation as to why this government-which has, by the way, done a pretty poor job of exhibiting any competence in dealing with agencies under its jurisdiction—is now deciding that they're going to interfere in the life of the colleges. It appears that this government more and more is assuming control at Queen's Park and within the Ministry of Health. They've certainly, I would say, appointed more supervisors to hospitals than we've ever seen in the past. I think this lack of any explanation as to why you would put supervisors into these self-regulated colleges really is demanding of an explanation. I think it's disappointing that, before this was introduced, the ministry didn't do any consultation with the health professionals. As I say, this came totally out of the blue. You are now going to interfere in the colleges, which are self-regulating bodies.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas. M^{me} France Gélinas: I support what my colleague has just said. Every deputant who came forward, I asked, "Do you know where this is coming from?" None of them knew. None of them had been consulted. To tell you the truth, it seems like there are other provisions for the ministry to deal with issues with a college. We know that there has been an issue with the college of opticians regarding refraction by their members, but the government has not taken advantage of any provisions that already exist in different legislation, actually, to deal with this. It seems like they now want supreme power over the

Well, colleges are not transfer payment agencies of the Ministry of Health; they are independent. They don't receive money from the Ministry of Health. At the end of the day, the Ministry of Health has no jurisdiction appointing supervisors, like Elizabeth mentioned, which has been used quite often by your government to take over the boards of different hospitals in the last couple of years. I fully support the motion of the Conservative Party.

Motion 61 is pretty well the same. There has to be some explaining done before you can move ahead and put forward a draconian motion like this.

The Chair (Mr. Shafiq Qaadri): Further comments? Ms. Witmer,

Mrs. Elizabeth Witmer: I think there's an alarming trend here. Since this government assumed office in 2003, I would say we've seen more focus put on central control of a lot of health agencies, professions and what have you. The LHINs are a good example. Look at the power that was given to the minister. We warned that this was going to be eroding the power of hospital boards. We've certainly seen that happen as LHINs have been set up. In many respects, they've become simply the spokesperson for the ministry and act as a buffer at times when

hospital supervisors are sent in. People can't get the answers they're looking for.

I don't think the government should seriously consider putting in place a supervisor without first having consultation with the colleges. If there's one college or two colleges in particular that have not behaved as they should, the minister and the ministry should be dealing with those colleges. Certainly there are provisions that allow them to do so. But to put this in place and simply give the minister and the ministry and the government more power is really inappropriate without any full explanation, and that explanation has never, ever been given.

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll proceed to the vote on PC motion 60. Those in favour? Those opposed? PC motion 60 is defeated.

I declare NDP motion 61 out of order.

PC motion 62: Ms. Elliott.

Mrs. Christine Elliott: Anticipating that the previous motion would be dealt with as it was, we have an alternative

I move that subsection 24(2) of the bill be struck out and the following substituted:

"(2) Section 5 of the act is amended by adding the following subsections:

"Appointment of college supervisor

""(2.1) If a council does not comply with the minister's request under clause (1)(d), the Lieutenant Governor in Council may appoint a person as college supervisor, on the recommendation of the minister, for the limited purpose of fulfilling the minister's requirement.

"Risk to patient safety

"(2.2) In deciding whether to make a recommendation, the minister must be satisfied that there is a risk to patient safety.

"Requirements before recommendation

"(2.3) Before the minister makes a recommendation in respect of an affected college, the minister shall send to the registrar of the affected college a written notice,

""(a) advising the affected college to the purpose for which the minister is making the recommendation and the specific requirement that was not fulfilled;

"(b) advising the affected college of the powers and duties the minister will ask the Lieutenant Governor in Council to bestow on the college supervisor;

"(c) inviting the affected college to provide the minister with submissions with respect to the recommendation; and

"'(d) specifying the time in which the affected college must provide its submissions to the minister, which must not be less than 60 days from the day the minister sends the notice.

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"Must provide copy

"(2.4) On making the recommendation, the minister shall provide the Lieutenant Governor in Council with a copy of the affected college's submissions.

"Must specify powers, duties

"(2.5) The Lieutenant Governor in Council must specify the powers and duties of a college supervisor appointed under this section, and the terms and conditions governing those powers and duties.

"Limited powers and duties

"(2.6) The powers and duties of a college supervisor are limited to those powers and duties necessary to address the requirement identified by the minister in his or her recommendation for the appointment of a supervisor.

"Council continues to have rights

"(2.7) The council of the affected college continues to have the right to act respecting any matters outside the scope of the duties of the college supervisor, and any such act of the council is valid without any approval of the college supervisor."

This is a proposed amendment put forward by the College of Physicians and Surgeons of Ontario and would ensure that government intrusion into the affairs of self-regulating professions is limited to only very exceptional cases where the public is at risk and the minister's existing powers under the RHPA are insufficient to enforce a directive from the minister. It also provides some procedural safeguards for the affected colleges and mitigates the impact on Ontario's self-regulating model for the health professions.

The Chair (Mr. Shafiq Qaadri): Ms. Gélinas?

M^{me} France Gélinas: I fully support this amendment. I believe the NDP put forward the exact same in amendment 63. Basically, at the core of all the colleges is the self-regulatory model. Once we agree to this model, then the government has an obligation to respect it. Unfortunately, amendment 60, which would have gotten rid of the supervisor, was not accepted. What this new amendment does is really allow the college to continue to do its work if the government has one particular issue, and limits government powers to the issue. I would have preferred that we not introduce supervisors to the college, but if that must be, then there has to be a framework within which, and this is what this amendment is all about.

The Chair (Mr. Shafiq Qaadri): Any further comments? Mr. Balkissoon.

Mr. Bas Balkissoon: As I stated before, the government will be introducing a motion to amend the provisions in the bill that pertain to the appointment of a college supervisor. As a result, we can't support this one.

The Chair (Mr. Shafiq Qaadri): Ms. Witmer?

Mrs. Elizabeth Witmer: Again, I've heard Mr. Balkissoon, and I just want to go back to what I said. There was never an explanation given to the colleges as to why you were introducing the supervisor. I guess, now that you've decided you're going to bulldoze ahead with it anyway and give more power to the minister, your recommendation doesn't speak to the need to identify why the minister is looking for a supervisor. I think that what is ultimately extremely important is that there be clear identification and that the public be deemed to be at risk, and that everybody knows when the supervisor

comes in that it's going to be for a limited time period. But we don't see that, and I think the motion we've introduced here addresses the concerns of the colleges. I would hope, despite the fact that perhaps you have been given different direction, that you would seriously consider this motion that both the NDP and the PC Party have put forward based on the recommendations from the colleges.

The Chair (Mr. Shafiq Qaadri): Further comments? We'll proceed to the vote. Those in favour of PC motion 62? Those opposed? PC motion 62 is defeated.

NDP motion 63, I understand, is also out of order and disposed of.

Government motion 64: Mr. Balkissoon.

Mr. Bas Balkissoon: I move that subsections 5.0.1(1) and (3) of the Regulated Health Professions Act, 1991, as set out in subsection 24(2) of the bill, be struck out and the following substituted:

"College supervisor

"5.0.1(1) The Lieutenant Governor in Council may appoint a person as a college supervisor, on the recommendation of the minister, where the minister considers it appropriate or necessary and where, in the minister's opinion, a council has not complied with a requirement under subsection 5(1).

"Notice

"(3) At least 30 days before recommending to the Lieutenant Governor in Council that a college supervisor be appointed, the minister shall give the college a notice of his or her intention to make the recommendation and in the notice advise the college that it may make written submissions to the minister.

"Review of submissions

"(3.1) The minister shall review any submissions made by the college and if the minister makes a recommendation to the Lieutenant Governor in Council to appoint a college supervisor, the minister shall provide the college's submissions, if any, to the Lieutenant Governor in Council."

This motion ensures that the supervisor will be appointed in cases where the college has failed to carry out a request made by the minister, and this is why the government is moving the motion.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas.

M^{me} France Gélinas: The colleges are not there to respond to requests made by the minister, and this is what this is setting out to do. This is not why we have colleges. We have colleges to ensure public safety from the acts that their members carry out. They're not there to carry out the wishes of the minister. If this is what you want, then you need to set up a completely different system. To suddenly parachute somebody in because the minister doesn't get his or her way is inappropriate. This is not why we have colleges, and this is not how we should be dealing with colleges of health professionals. This is completely unacceptable. The amendment puts a 30-day notice and adds that, in the minister's opinion—that's a very low substitution for what we're asking for. This is not acceptable.

The Chair (Mr. Shafiq Qaadri): Ms. Elliott.

Mrs. Christine Elliott: I would concur with the comments made by Ms. Gélinas that you have to have some other criteria other than the minister's opinion about the advisability of a college supervisor. There needs to be something involving a danger to the public before this step can be taken. This is very significant. It interferes with the self-regulating concept, and so we can certainly not support this amendment.

The Chair (Mr. Shafiq Qaadri): Ms. Witmer.

Mrs. Elizabeth Witmer: No, certainly we can't support this amendment. I don't know where the transparency is in all of this. It doesn't seem to be there. I would think that in making any decision, it would have to be based on whether or not there's a risk to patient safety. That really is the role of the colleges. There's no reference made to that whatsoever. It seems that the minister, willy-nilly, can decide whether or not they would send in a supervisor. As far as enabling the college to make a written submission to the minister, we've seen that happen in other cases, and it doesn't seem to have much of an impact. There are just not sufficient criteria here to justify such a significant step as a supervisor taking over and then not clearly identifying what the powers and duties are going to be of that supervisor and how long that person is going to be in place. Also, the council needs to continue to have rights as well.

I'm disappointed that the ministry doesn't seem to be concerned about transparency. This seems to be a somewhat secretive process, and there's no clear definition as to why it will happen, how long it will happen, what the powers are etc. It's very disappointing to see this supervisor provision.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Seeing none, I'll proceed to the vote. Those in favour of government motion 64? Those opposed? Government motion 64 is carried.

Government motion 65.

1620

Mr. Bas Balkissoon: I move that subsections 6(7), (8) and (9) of the Regulated Health Professions Act, 1991, as set out in subsection 24(3) of the bill, be struck out and the following substituted:

"Additional audits

"(7) The college and the advisory council shall be subject, at any time, to any other audits relating to any aspect of its affairs as the minister may determine to be appropriate, conducted by an auditor appointed by or acceptable to the minister.

"Auditor to submit results

"(8) The auditor shall submit the results of any audit performed under subsection (7) to the minister and the college."

This motion removes a redundant reference to financial audits within the original proposed amendment and also ensures that the advisory council as well as the colleges are subject to any other audits.

The Chair (Mr. Shafiq Qaadri): Comments? Madame Gélinas.

M^{me} France Gélinas: I'm guessing that the college would be interested to know who will pay for those audits that the minister wants.

Mr. Bas Balkissoon: The motion is silent on that. I would think that the minister is open to discussion with the colleges as to who would pay and whether the minister would be willing to.

The Chair (Mr. Shafiq Qaadri): Ms. Witmer.

Mrs. Elizabeth Witmer: In that regard, we all know who pays for the supervisor who goes into a hospital. The poor hospital, that has already been slapped on the hand by the minister, perhaps, ends up having to bear the costs of the supervisor and everything else that goes with it. Oftentimes, they're in a deficit situation, and that's why the supervisor is sent in, and they incur even more in the way of a deficit. I think that question should be answered.

The other thing that is very important to take into consideration is that colleges don't receive any money from the government. They are self-funded by the members of the college. Again, the government doesn't seem to be prepared to have any criteria that would trigger an audit, and again, they can go in at any time, as the minister may determine to be appropriate.

I think we see a bully mentality and we see a lot of control being handed over to the minister. We've been seeing this ever since 2003, and I will tell you, we're not seeing better health care results for patients. It's very, very concerning to not see any criteria here as to who would pay, what would trigger the audit and some of the other information that obviously is totally lacking.

Again, I really would say to the government: Why would you introduce this without any consultation with the stakeholders involved? This is a government that talks about transparency, talks about consultation; they were going to be better than anybody else in this regard, and we're seeing totally the opposite.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas.

M^{me} France Gélinas: This is the part of the bill that completely tilts the power balance towards the minister and the ministry. One can't help but think that we are now bringing political interference into self-regulatory colleges, which flies in the face of what the model is all about. They are there to protect the public from the acts of their members; they're not there to follow the will of the ministry. The additional audits on small colleges that don't have a big membership and don't have a lot of money can really, really tilt the balance of power completely to the ministry, where the college won't have, as its prime objective, to assure the safety of Ontarians, but to survive by the will of the minister.

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll now proceed to the vote.

Mrs. Elizabeth Witmer: Recorded vote.

The Chair (Mr. Shafiq Qaadri): A recorded vote is fine.

Aves

Aggelonitis, Balkissoon, Dhillon, Lalonde, Mitchell.

Nays

Elliott, Gélinas, Witmer.

The Chair (Mr. Shafiq Qaadri): I declare government motion 65 to have been carried.

I will invite you, please, to present PC motion 66.

Mrs. Christine Elliott: I move that section 24 of the bill be amended by adding the following subsection:

"(5.1) Section 33 of the act is amended by adding the following subsection:

"Exception

"(2.1) Subsection (1) does not apply with respect to a member of the Ontario College of Social Workers and Social Service Workers who holds the title "doctor.""

This amendment was requested by the Social Work Doctors' Colloquium because they believe that restricting the use of the word "doctor" to qualified social workers is really acting as an impediment and discouraging people from entering the profession and staying in Ontario. Many are leaving for other jurisdictions where they are able to use the title "doctor." So given the various capacities in which social workers act, I believe it is in the best interests of Ontarians that this amendment be approved.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Elliott, but, again, before I allow debate to proceed, I will need to declare this motion out of order.

With that, I will—yes, Ms. Witmer?

Mrs. Elizabeth Witmer: I would ask for unanimous consent to open this section of the act.

The Chair (Mr. Shafiq Qaadri): Ms. Witmer has asked for unanimous consent to open this section of the act. Do I have unanimous consent?

Mrs. Elizabeth Witmer: Recorded vote, please.

The Chair (Mr. Shafiq Qaadri): This is not a vote. I do not have unanimous consent. The ruling stands. PC motion 66 is out of order.

Given that NDP motion 67 is also out of order, I will now invite government motion 68.

Mr. Bas Balkissoon: I move that section 33.1 of the Regulated Health Professions Act, 1991, as set out in subsection 24(6) of the bill, be amended:

(a) by striking out the portion of subsection (1) before paragraph 1 and substituting the following:

"Psychotherapist title

"(1) Despite section 8 of the Psychotherapy Act, 2007, a person who holds a certificate of registration authorizing him or her to perform the controlled act of psychotherapy and is a member of one of the following colleges may use the title 'psychotherapist' if he or she complies with the conditions in subsections (2), (3) and (4)"; and

(b) by adding the following subsections:

"In accordance with regulations

"(4) A person mentioned in subsection (1) shall use the title 'psychotherapist' in accordance with the regulations made under subsection (5).

"Regulations

"(5) Subject to the approval of the Lieutenant Governor in Council and with prior review by the minister, the council of a college mentioned in paragraphs 1 to 4 of subsection (1) may make regulations governing the use of the title 'psychotherapist' by members of the college."

This motion ensures that the colleges whose members may use the title "psychotherapist" can certainly make regulation governing the use of the title.

The Chair (Mr. Shafiq Qaadri): Comments? Ms. Elliott?

Mrs. Christine Elliott: Just a point of clarification: That would mean they can only use "psychotherapist"; they can't be referred to as "doctor." Is that correct?

Mr. Bas Balkissoon: This is just on the title "psychotherapist" at this time. I think there is a further motion dealing with the "doctor" issue.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote. Those in favour of government motion 68? Those opposed? Government motion 68 carries.

PC motion 69.

Mrs. Christine Elliott: I move that subsection 24(8) of the bill be struck out.

Again, this deals with the whole issue of the appointment of college supervisors and was requested by the College of Nurses of Ontario, the Ontario Dental Association, the College of Dietitians of Ontario and the College of Chiropodists of Ontario. Again, it's dealing with their feeling that this is an erosion of the whole concept of self-regulation, and they're asking that this section be removed in its entirety.

The Chair (Mr. Shafiq Qaadri): Any further comments? Mr. Balkissoon?

Mr. Bas Balkissoon: We won't be supporting this motion. We introduced a motion to deal with the college supervisor, which was passed.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote. Those in favour of PC motion 69? Those opposed? PC motion 69 is defeated.

NDP motion 70.

M^{me} France Gélinas: I move that section 24 of the bill be amended by adding the following subsection:

"(8.1) Clause 43(1)(d) of the act is amended by adding including permitting its use by a member of the Ontario College of Social Workers and Social Service Workers who holds the title "doctor" at the end."

The Chair (Mr. Shafiq Qaadri): Any further comments?

Mr. Bas Balkissoon: We do not support this motion. The government will be introducing a motion with respect to the use of the title.

The Chair (Mr. Shafiq Qaadri): If there are no further comments, we'll proceed to the vote. I inform the committee that that motion is also out of order.

We'll proceed then to PC motion 71.

M^{me} France Gélinas: Chair, could you tell me why it's out of order again? Sometimes it's because it has been dealt with; sometimes it's because it's—

The Chair (Mr. Shafiq Qaadri): I would invite legislative counsel to do so.

Mr. Ralph Armstrong: This is a further motion that purports to deal with a section of the act not opened by the bill as passed at second reading.

The Chair (Mr. Shafiq Qaadri): We'll proceed now to PC motion 71. Ms. Elliott.

Mrs. Christine Elliott: I move that section 43.2 of the Regulated Health Professions Act, 1991, as set out in subsection 24(9) of the bill, be struck out and the following substituted:

"Expert committees

"43.2 The Lieutenant Governor in Council may make regulations establishing one or more expert committees for the purposes of dealing with matters related to drugs under this act, the code, and health profession acts."

This amendment has been suggested just to address matters relating to the use of various drugs under the act.

The Chair (Mr. Shafiq Qaadri): Comments? Mr. Balkissoon.

Mr. Bas Balkissoon: The government cannot support this motion. Making this amendment removes the flexibility to establish expert committees in the future in respect of other matters.

The Chair (Mr. Shafiq Qaadri): If there are no further comments, we'll proceed to the vote. Those in favour of PC motion 71? Those opposed? PC motion 71 is defeated.

NDP motion 72.

M^{me} France Gélinas: I'm being buried under papers here.

I move that section 43.2 of the Regulated Health Professions Act, 1991, as set out in subsection 24(9) of the bill, be amended by adding the following subsections:

"Membership

"(2) Half the members of an expert committee shall be members of the affected health profession and half shall be pharmaceutical experts.

"Public documents

"(3) Every report of an expert committee is a public document, and shall be provided to all affected colleges and professional associations."

The Chair (Mr. Shafiq Qaadri): Further comments? Mr. Balkissoon.

Mr. Bas Balkissoon: We can't support this motion because it addresses matters that are more appropriately dealt with in regulations, which may establish expert committees under the RHPA, 1991.

The Chair (Mr. Shafiq Qaadri): Any further comments? Madame Gélinas.

M^{me} France Gélinas: Am I hearing, then, that you support the idea that the result of the reports be provided to the affected colleges and professions—it's just that you want it in regulation—or that you don't support it?

Mr. Bas Balkissoon: We don't support this, because it should be in regulation, as I stated before.

The Chair (Mr. Shafiq Qaadri): If there are no further comments, we'll proceed to the vote. Those in favour of NDP motion 72? Those opposed? Defeated.

NDP motion 73.

M^{me} **France Gélinas:** I move that section 43.2 of the Regulated Health Professions Act, 1991, as set out in subsection 24(9) of the bill, be amended by adding the following subsection:

"Restricted mandate

"(2) Despite anything else in this section, an expert committee shall only act when there is a direct request from a college, and all of its documents shall be made public."

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon.

Mr. Bas Balkissoon: Same comment: We can't support this because this is better dealt with in regulations.

The Chair (Mr. Shafiq Qaadri): Any further comments? Those in favour of NDP motion 73? Those opposed? NDP motion 73 is defeated.

NDP motion 74.

M^{me} France Gélinas: All right. I move that subsection 24(11) of the bill be struck out and the following substituted:

"(11) Subsection 3(1) of schedule 2 to the act is

amended by adding the following paragraph:

"4.1 To collaborate and consult with other health professional colleges in respect of the standards of knowledge, skill and judgement relating to the performance of controlled acts common among health professions to enhance interprofessional collaboration, while respecting the unique character of individual health professions and their members."

The Chair (Mr. Shafiq Qaadri): Further comments? Mr. Bas Balkissoon: Mr. Chair, can I just take a short break? Two minutes?

The Chair (Mr. Shafiq Qaadri): Please. Five minutes.

The committee recessed from 1632 to 1636.

The Chair (Mr. Shafiq Qaadri): We'll resume.

We're now on questions or comments regarding NDP motion 74. Are there any further questions or comments? Mr. Balkissoon.

Mr. Bas Balkissoon: This motion actually strikes out the wording in the existing bill. The government is very happy that the wording in the existing bill will achieve the objective of interprofessional collaboration, and as such, we'll be voting against it.

The Chair (Mr. Shafiq Qaadri): Madame Gélinas.

M^{me} France Gélinas: I'd like you to take a good look at the wording because, if you look at it, it looks like what the bill is saying is that it wants to ensure the actual development of shared standards—that seems to be the focus of the bill, the way it is written—when, I think, what we're trying to do is make sure that the college should collaborate and consult between the colleges and the health care professionals. But if you read it, it looks like what we're trying to achieve is to basically develop shared standards, which, I don't think is what we're trying to do.

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll proceed to the vote. Those in favour of NDP motion 74? Those opposed? NDP motion 74 is defeated.

NDP motion 75.

M^{me} France Gélinas: I move that subsection 13.1(1) of the Regulated Health Professions Act, 1991, as set out in subsection 24(13) of the bill, be struck out and the following substituted:

"Professional liability insurance

"13.1(1) It is the duty of the college to ensure that every active member has whatever professional liability insurance is required under the health profession act or any regulations or bylaws made under that act."

The only change here is that only active members would have to carry professional liability insurance. Most liability insurance for health care professionals covers you way past when you finish practising. It covers you for the period of time that you were practising, and if five years down the road they discover that something you did five years ago was wrong, your insurance will still cover you, but you only need to be covered when you're actively practising.

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon.

Mr. Bas Balkissoon: We can't support this motion because there is a government motion to be introduced that will amend the provisions of the bill pertaining to professional liability insurance and protection.

The Chair (Mr. Shafiq Qaadri): Further comments? We'll proceed to the vote on NDP motion 75. Those in favour? Those opposed? Motion 75 is defeated.

NDP motion 76.

M^{me} **France Gélinas:** I move that subsections 13.1(1) and (2) of the Regulated Health Professions Act, 1991, as set out in subsection 24(13) of the bill, be struck out and the following substituted:

"Professional liability protection

"13.1(1) It is the duty of the college to ensure that every member has whatever professional liability protection is required under the health profession act or any regulations or bylaws made under that act.

"Protection requirements

"(2) It is the duty of a person who is registered by the college as a member to have whatever professional liability protection is required under the health profession act governing the member's health profession or any regulations or bylaws made under that act, from a provider of the member's choice, and independent from that of the member's employer, if any."

Basically, what this is trying to say is that the college does not have to provide liability insurance to its membership; it just has to ensure that every member has professional liability protection.

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon?

Mr. Bas Balkissoon: We can't support this motion. As previously stated, there's a government motion that will deal with professional liability insurance, and I believe it addresses this issue.

The Chair (Mr. Shafiq Qaadri): Any further comments? Those in favour of NDP motion 76? Those opposed? Motion 76 is defeated.

Government motion 77.

Mr. Bas Balkissoon: Did you say "government motion"?

The Chair (Mr. Shafiq Qaadri): Government motion 77.

Mr. Bas Balkissoon: Seventy-seven is NDP.

M^{me} France Gélinas: No, not in the new order.

The Chair (Mr. Shafiq Qaadri): Unless there has been a change in government which I'm not aware of.

Mr. Bas Balkissoon: There's a lot of paper in front of me.

Interjection.

Mr. Bas Balkissoon: It has been renumbered, I was told by the clerk. Give me one second.

I move that section 13.1 of schedule 2 to the Regulated Health Professions Act, 1991, as set out in subsection 24(13) of the bill, be struck out and the following substituted:

"Professional liability insurance

"13.1(1) No member of a college in Ontario shall engage in the practice of the health profession unless he or she is personally insured against professional liability under a professional liability insurance policy or belongs to a specified association that provides the member with personal protection against professional liability.

"Insurance requirements

"(2) A member mentioned in subsection (1) shall comply with the requirements respecting professional liability insurance or protection against professional liability specified by the college and prescribed in the regulations made under the health profession act governing the member's health profession or set out in the bylaws.

"Professional misconduct

"(3) In addition to the grounds set out in subsection 51(1), a panel of the discipline committee shall find that a member has committed an act of professional misconduct if the member fails to comply with subsection (1) or (2)."

This motion clarifies the requirement of all college members to hold personal liability coverage and to comply with the college rules with respect to such coverage. I believe it addresses the insurance issue.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 77? Seeing no comments, I will proceed to the vote. Those in favour of the current government's motion 77? Those opposed?

M^{me} France Gélinas: You went a little bit too fast. I

The Chair (Mr. Shafiq Qaadri): Oh, I'm sorry. Do you have a comment, then?

M^{me} France Gélinas: Yes.

The Chair (Mr. Shafiq Qaadri): Please. I offer you the floor.

M^{me} France Gélinas: Under professional misconduct, you have: "a panel of the discipline committee shall find that a member has committed an act of professional

misconduct if the member fails to comply with subsection (1) or (2)." Can you explain to me what that means?

Mr. Bas Balkissoon: Sorry, can you repeat that?

M^{me} France Gélinas: It's your motion—the last paragraph.

Mr. Bas Balkissoon: The last paragraph?

M^{me} France Gélinas: Yes.

Mr. Bas Balkissoon: Mr. Chair, I wonder if I could ask the legal staff from the ministry to explain it.

The Chair (Mr. Shafiq Qaadri): Please.

Ms. Christine Henderson: It's Christine Henderson, Mr. Chair. The intention in subsection (3) is to ensure that the enforcement of the provisions in subsections (1) and (2) are met.

Mme France Gélinas: Okay, then what is this panel of

the discipline committee?

Ms. Christine Henderson: The discipline committee has extensive powers set out under the Health Professions Procedural Code and may provide a member with everything from a reprimand to more substantial penalties for non-compliance if he or she is found guilty of professional misconduct.

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M^{me} France Gélinas: Why is it a panel of the discipline committee? Why is it not the discipline committee that deals with it?

Ms. Christine Henderson: That's a procedural issue. The chair of the committee generally selects a panel from the committee members. It would be impractical for the entire committee to sit and judge every single hearing of every single matter.

Mme France Gélinas: Okay.

The Chair (Mr. Shafiq Qaadri): Are there any further comments? We'll proceed to the vote. Those in favour of government motion 77? Those opposed? Motion 77 is carried.

NDP motion 78.

M^{me} France Gélinas: I move that section 24 of the bill be amended by adding the following subsections:

"(13.1) Subsection 25(2) of schedule 2 to the act is repealed and the following substituted:

"Composition of panel

"(2) A panel shall be composed of at least three persons, at least one of whom shall be a resident of Ontario who is not a member of the college."

"(13.2) Section 25 of schedule 2 to the act is amended

by adding the following subsection:

"Restriction

"(4.1) Despite subsection (1), a panel shall not be selected to investigate a complaint if, in the opinion of the chair of the inquiries, complaints and reports committee, the complaint does not relate to professional misconduct, incompetence or incapacity on the part of a member."

The Chair (Mr. Shafiq Qaadri): Before we proceed, I inform you, Madame Gélinas, that this motion is out of order.

I would now invite presentation of PC motion 79.

Mrs. Christine Elliott: I move that section 24 of the bill be amended by adding the following subsections:

"(13.1) Subsection 25(2) of schedule 2 to the act is repealed and the following substituted:

"Composition of panel

"(2) A panel shall be composed of at least three persons, at least one of whom shall be a resident of Ontario who is not a member of the college.'

"(13.2) Section 25 of schedule 2 to the act is amended by adding the following subsection:

"Restriction

- "(4.1) Despite subsection (1), a panel shall not be selected to investigate a complaint if, in the opinion of the chair of the inquiries, complaints and reports committee, the complaint does not relate to professional misconduct, incompetence or incapacity on the part of a member.'
- "(13.3) Subsection 38(2) of schedule 2 to the act is repealed and the following substituted:

"Composition of panel

"(2) A panel shall be composed of at least three and not more than five persons, at least two of whom shall be residents of Ontario who are not members of the college."

The Chair (Mr. Shafiq Qaadri): Before we proceed, I also inform you, Ms. Elliott, that PC motion 79 is also out of order.

I'll now invite Madame Gélinas to present NDP motion 80.

M^{me} **France Gélinas:** I move that section 24 of the bill be amended by adding the following subsection:

"(13.1) Subsection 38(2) of schedule 2 to the act is repealed and the following substituted:

"Composition of panel

"(2) A panel shall be composed of at least three and not more than five persons, at least two of whom shall be residents of Ontario who are not members of the college."

The Chair (Mr. Shafiq Qaadri): Mr. Balkissoon.

Mr. Bas Balkissoon: The government cannot support—

The Chair (Mr. Shafiq Qaadri): I'm sorry, I'll need to interrupt you there, Mr. Balkissoon. I inform Ms. Gélinas that NDP motion 80 is also out of order.

I'll proceed now, therefore, to NDP motion 81.

M^{me} France Gélinas: I move that section 24 of the bill be amended by adding the following subsection:

"(13.1) Subsection 38(2) of schedule 2 to the act is repealed and the following substituted:

"Composition of panel

""(2) A panel shall be composed of at least three and no more than five persons, at least one of whom shall be a person appointed to the council by the Lieutenant Governor in Council, and at least one of whom shall be a resident of Ontario who is not a member of the college."

Le Président (M. Shafiq Qaadri): Encore une fois, madame Gélinas, je vous informe que votre motion 81 n'est pas à l'ordre non plus.

We now proceed to government motion 82. Mr. Balkissoon.

Mr. Bas Balkissoon: I move that subsections 24(14) and (15) of the bill be struck out.

This is a technical amendment which returns the provisions to the original wording in the RHPA. Apparently the colleges have had a change of opinion from the draft proposal, and they would like this removed and returned to the original wording.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 82? Seeing none, we'll proceed to the vote. Those in favour of government motion 82? Those opposed? Motion 82 is carried.

NDP motion 83.

M^{me} France Gélinas: I move that subclause 80.1(a)(i.1) of schedule 2 to the Regulated Health Professions Act, 1991, as set out in subsection 24(16) of the bill, be amended by striking out "other health profession colleges" at the end and substituting "other health professional.s"

The Chair (Mr. Shafiq Qaadri): Further comments? Mr. Balkissoon.

Mr. Bas Balkissoon: The government will introduce a motion with respect to interprofessional collaboration and the quality assurance processes under the RHPA. As a result, we'll be opposing this motion.

The Chair (Mr. Shafiq Qaadri): Any further comments? We'll proceed to the vote. NDP motion 83: Those in favour? Those opposed? NDP motion 83 is defeated.

Government motion 84: Mr. Balkissoon.

Mr. Bas Balkissoon: I move that subclause 80.1(a)(i.1) of schedule 2 to the Regulated Health Professions Act, 1991, as set out in subsection 24(16) of the bill, be struck out and the following substituted:

"(i.1) promote interprofessional collaboration."

The Chair (Mr. Shafiq Qaadri): Further comments? We'll proceed to the vote then. Those in favour of government motion 84? Those opposed? Motion 84 is carried.

NDP motion 85.

M^{me} **France Gélinas:** I move that section 24 of the bill be amended by adding the following subsection:

"(16.1) Section 81 of schedule 2 to the act is amended by adding the following subsection:

"Assessor to be neutral peer

"(2) An assessor must be a neutral person who can demonstrate that he or she is qualified to assess the area in question."

This amendment is put forward because some of the health professionals who are engaging in cutting-edge or sometimes alternative forms of practice are sometimes audited by health professionals who have very little knowledge with respect to their line of work.

The Chair (Mr. Shafiq Qaadri): Thank you, Madame Gélinas. Before opening the floor for debate, I once again inform you that NDP motion 85 is out of order.

Shall section 24, as amended, carry? Carried.

We've not received any motions proposed for section 25. Shall section 25 carry? Carried.

We'll proceed now to section 26. PC motion 86: Ms. Elliott.

Mrs. Christine Elliott: I move that paragraph 2 of subsection 47.2 of the Social Work and Social Service Work Act, 1998, as set out in section 26 of the bill, be struck out and the following substituted:

"2. When identifying himself or herself in writing as a psychotherapist on a name tag, business card or any document, the member must set out his or her full name, immediately followed by the restricted title that the member may use under this act, followed in turn by 'psychotherapist."

This amendment was suggested just to reduce confusion because there is some suggestion that the lengthy title of the college followed by the use of "psychotherapist" is cumbersome and may lead a member of the public to believe that the member is employed by or holds an official position at the college. This just indicates what area the psychotherapist comes from and their title derives from.

The Chair (Mr. Shafiq Qaadri): Further comments? Mr. Balkissoon?

Mr. Bas Balkissoon: The government will be introducing a motion with respect to the use of the title "psychotherapist" by members of the Ontario College of Social Workers and Social Service Workers and, as such, we'll be voting against this motion.

The Chair (Mr. Shafiq Qaadri): Any further comments? Those in favour of PC motion 86? Those opposed? PC motion 86 is defeated.

Government motion 87.

Mr. Bas Balkissoon: I move that section 47.2 of the Social Work and Social Service Work Act, 1998, as set out in section 26 of the bill, be amended by striking out "abbreviated" in the portion before paragraph 1 and by adding the following paragraph:

"3. The member may only use the title 'psychotherapist' in compliance with this act, the regulations and

the bylaws."

The Chair (Mr. Shafiq Qaadri): Further comments? We'll proceed to the vote. Those in favour of government motion 87? Those opposed? Motion 87 is carried.

Government motion 88.

Mr. Bas Balkissoon: I move that section 26 of the bill be amended by adding the following subsection:

"(2) The act is amended by adding the following section:

""Doctor" title

"47.3(1) Despite subsection 33(1) of the Regulated Health Professions Act, 1991, a person who is a member of the college and holds an earned doctorate may use the title "doctor," a variation, abbreviation or an equivalent in another language if he or she complies with the following conditions:

"1. The member may only use the title "doctor" in compliance with the requirements under this act, the regulations and the bylaws.

"2. When describing himself or herself orally using the title "doctor," the member must also mention that he or she is a member of the Ontario College of Social Workers and Social Service Workers, or identify himself or herself using the title restricted to him or her as a member of the college.

"3. When identifying himself or herself in writing using the title "doctor" on a name tag, business card or any document, the member must set out his or her full name after the title, immediately followed by at least one

of the following:

"i. Ontario College of Social Workers and Social Service Workers,

"ii. the title that the member may use under this act.

"Definition

"(2) In this section,

""earned doctorate" means a doctoral degree in social work that is,

""(a) granted by a post-secondary educational institution authorized in Ontario to grant the degree under an act of the assembly, including a person that is authorized to grant the degree pursuant to the consent of the Minister of Training, Colleges and Universities under the Post-secondary Education Choice and Excellence Act, 2000,

"(b) granted by a post-secondary educational institution in a Canadian province or territory other than Ontario and that is considered by the college to be equivalent to a doctoral degree described in clause (a), or

"(c) granted by a post-secondary educational institution located in a country other than Canada that is considered by the college to be equivalent to a doctoral degree described in clause (a)."

This motion amends the Social Work and Social Service Work Act, 1998, to authorize the appropriately qualified members of the Ontario College of Social Workers and Social Service Workers to use the title "doctor" when providing or offering to provide health care to individuals in Ontario.

I believe this deals with the issue that was raised in previous motions and raised by the stakeholders.

The Chair (Mr. Shafiq Qaadri): The motion is out of order.

Mr. Bas Balkissoon: Mr. Chair, I would ask all-party consent to introduce the motion.

The Chair (Mr. Shafiq Qaadri): I have a request for unanimous consent to proceed. Do I have unanimous consent?

Mr. Balkissoon, please proceed.

Mr. Bas Balkissoon: If we could just take the vote.

The Chair (Mr. Shafiq Qaadri): Those in favour of government motion 88? Carried.

Shall section 26, as amended, carry? Carried.

Then I invite you, Mr. Balkissoon, to present the final motion of the day, government motion 89.

Mr. Bas Balkissoon: I move that section 27 of the bill be struck out and the following substituted:

"Commencement

"27(1) Subject to subsection (2), this act comes into force on the day it receives royal assent.

"Same

"(2) Sections 1, 8 and 9, subsection 10(1.1), section 11, subsection 12(2), sections 14, 16, 17, 18, 19, 22 and 23, subsections 24(6), (13) and (16) and section 26 come into force on a day to be named by proclamation of the Lieutenant Governor."

The Chair (Mr. Shafiq Qaadri): Mme. Gélinas.

M^{me} France Gélinas: Why are we decreasing the number of sections that come into force upon royal assent?

Mr. Bas Balkissoon: Sorry?

M^{me} France Gélinas: Why are we decreasing the number of sections that come into force upon royal assent?

Mr. Bas Balkissoon: Can you refer to which section is being left out? Because I thought they were all captured.

M^{me} France Gélinas: They're not. If you look, the sections that were to receive royal assent are different.

Mr. Bas Balkissoon: Mr. Chair, can we take a quick break, and I'll check with my staff.

The committee recessed from 1701 to 1702.

The Chair (Mr. Shafiq Qaadri): We're ready to proceed. Mr. Balkissoon, the floor is yours.

Mr. Bas Balkissoon: I hope I can provide an explanation. I'm being told that the ones that are receiving royal assent can do it right now. The ones that are not, the colleges require time to do their regulations and policies, and they will receive royal assent at a later date.

The Chair (Mr. Shafiq Qaadri): Any further comments?

M^{me} France Gélinas: Some of the colleges are not here to refute this statement, but we've seen a number of bills receive royal assent and never be proclaimed. So whenever we see a bill that has some of its important clauses that won't be enacted until it receives proclamation, it leads me to believe that half of this bill could sit on the shelf forever on end and never get enacted. I just wanted to be on record saying you moved more important sections of the bill that won't come into effect after this bill receives royal assent. Is this manoeuvre because some of what's in that bill you have no intention of ever bringing to proclamation, which means it will never become law?

Mr. Bas Balkissoon: I'll just reiterate that this is a request of the colleges because they're not prepared to move forward at this time.

The Chair (Mr. Shafiq Qaadri): Any further comments? I'll proceed to the motion. Those in favour of government motion 89? Those opposed? Government motion 89 is carried.

Shall section 27, as amended, carry? Carried.

Shall section 28 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 179, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

Is there any further business before this committee? Committee adjourned.

The committee adjourned at 1704.





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STANDING COMMITTEE ON SOCIAL POLICY

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Mr. Bas Balkissoon (Scarborough-Rouge River L)
Mrs. Christine Elliott (Whitby-Oshawa PC)
M^{me} France Gélinas (Nickel Belt ND)

Also taking part / Autres participants et participantes
Ms. Christine Henderson, legal counsel,
Ms. Linda Altuna, legal counsel,
Ministry of Health and Long-Term Care

Clerk / Greffier Mr. Katch Koch

Staff / Personnel
Mr. Ralph Armstrong, legislative counsel

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First Session, 39th Parliament

Official Report of Debates (Hansard)

Monday 26 October 2009

Standing Committee on Social Policy

Student Achievement and School Board Governance Act, 2009 Assemblée législative de l'Ontario

Première session, 39^e législature

Journal des débats (Hansard)

Lundi 26 octobre 2009

Comité permanent de la politique sociale

Loi de 2009 sur le rendement des élèves et la gouvernance des conseils scolaires

Chair: Shafiq Qaadri Clerk: Katch Koch Président : Shafiq Qaadri Greffier : Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Monday 26 October 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Lundi 26 octobre 2009

The committee met at 1402 in committee room 1.

SUBCOMMITTEE REPORT

Le Président (M. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la politique sociale. We are here, as you know, to consider a bill on the education file, Bill 177, the Student Achievement and School Board Governance Act.

Before moving to the presentations, I would invite the entry of the subcommittee report, for which I will call on Ms. Mitchell.

Mrs. Carol Mitchell: Your subcommittee on committee business met on Thursday, October 15, 2009, to consider the method of proceeding on Bill 177, An Act to amend the Education Act with respect to student achievement, school board governance and certain other matters, and recommends the following:

(1) That the committee meet for the purpose of holding public hearings on Monday, October 26 and Tuesday, October 27, 2009, in Toronto;

(2) That the clerk of the committee, with the authority of the Chair, place an advertisement for one day about the public hearings in major newspapers in Sudbury, Thunder Bay, Ottawa, London, Windsor, including the Toronto Star, the Globe and Mail and L'Express;

(3) That the clerk of the committee post information regarding the hearings on the Ontario parliamentary channel and the Legislative Assembly website;

(4) That interested people who wish to be considered to make an oral presentation on Bill 177 should contact the clerk of the committee by Thursday, October 22, 2009, at 5 p.m.;

(5) That the clerk of the committee provide a list of all interested presenters to the subcommittee following the deadline for requests;

(6) That the length of presentations for witnesses be 10 minutes:

(7) That the deadline for written submissions be Thursday, October 29, 2009, at 12 noon;

(8) That the deadline for filing amendments to the bill with the clerk of the committee be Thursday, October 29, 2009, at 5 p.m.;

(9) That clause-by-clause consideration of the bill be scheduled for Monday, November 2, 2009;

(10) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the adoption of the report of the subcommittee, to commence making any

preliminary arrangements to facilitate the committee's proceedings.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Mitchell. Any further comments or amendments? Ms. Jones.

Ms. Sylvia Jones: I move that the report of the subcommittee dated Thursday, October, 15, 2009, be amended by striking out paragraph 9 and replacing it with:

"(9) That clause-by-clause consideration of the bill be scheduled for Monday, November 16, 2009."

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones. Any further comments on the amendment to the subcommittee report before we proceed to the vote? Ms. Mitchell and then Mr. Marchese.

Mrs. Carol Mitchell: Just a question: Does that alter number (8) then?

Ms. Sylvia Jones: No, I don't think it's necessary to change the date in point (8).

The Chair (Mr. Shafiq Qaadri): Señor Marchese.

Mr. Rosario Marchese: I just wanted to say that I talked to Liz Witmer, who obviously said that she couldn't be there for that day, and your House leader said she was happy to accommodate this date. So I just wanted to express my support for the moving of the date to accommodate the Conservative member.

The Chair (Mr. Shafiq Qaadri): Fair enough. Thank you. Ms. Mitchell.

Mrs. Carol Mitchell: We are certainly supportive.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll proceed to the vote. Those in favour of the amendment? Those opposed? The amendment carries.

May I have a motion, unless there's further consideration, for the adoption of the subcommittee report, as amended?

Interjection.

The Chair (Mr. Shafiq Qaadri): Ms. Mitchell. All in favour? Those opposed? Carried.

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STUDENT ACHIEVEMENT AND SCHOOL BOARD GOVERNANCE ACT, 2009

LOI DE 2009 SUR LE RENDEMENT DES ÉLÈVES ET LA GOUVERNANCE DES CONSEILS SCOLAIRES

Consideration of Bill 177, An Act to amend the Education Act with respect to student achievement,

school board governance and certain other matters / Projet de loi 177, Loi modifiant la Loi sur l'éducation en ce qui concerne le rendement des élèves, la gouvernance des conseils scolaires et d'autres questions.

The Chair (Mr. Shafiq Qaadri): We'll now proceed to our presenters. For all who are going to present and those who may be listening and watching elsewhere, we'll have 10 minutes per group, which will be enforced with military precision. Any time remaining within those 10 minutes will be distributed evenly amongst the parties for questions and comments and cross-examination.

ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I'd now invite our first presenters of the day to please come forward: the Ontario Public School Boards' Association, Ms. Schenk, Ms. Fife, Ms. Anderson, Ms. McIntyre, Mr. Brockington and Mr. Sprang. I'd invite you to please individually introduce yourselves as you're speaking for the purposes of Hansard recording the permanent record. Your time officially begins now.

Ms. Colleen Schenk: Good afternoon. I'm Colleen Schenk, president of OPSBA, the Ontario Public School Boards' Association. I'm joined here today by my vice-presidents Catherine Fife and Riley Brockington.

Thank you for this opportunity to comment on Bill 177. We will leave a more detailed written submission that addresses our points of concurrence, our main challenges with the bill and recommended revisions.

Bill 177 flows, to a great extent, from the report of the minister's governance review committee. OPSBA and its member boards were actively involved in this government consultation process. We know that reaction to the bill was complicated by the release this summer of the ministry's consultation paper on the provincial interest regulations, which flow from earlier amendments to the Education Act made in 2006.

There is, without a doubt, overlap between these two pieces of legislation, and, taken together, they raise significant issues for us. These could be characterized as increases in responsibility and accountability for school boards accompanied by diminishment of school board authority. This is why we consistently emphasize the need for support, collaboration and partnership among all levels of government. We all have a shared and vested interest in making sure that all children in the province have every opportunity to succeed in school and in life.

When the governance review committee's report was released, it affirmed the importance of school boards as an effective and vital level of governance for promoting democracy and civil engagement at the local level. We did, however, take issue with directions in the report that expanded scope for imposing supervision on school boards. This was contrary to our input. OPSBA supports the need for greater clarity around each partner's respective roles, responsibilities and scope of accountability.

Today, we want to talk about specific provisions in Bill 177. There are some that we clearly support and others that we believe require more work. Our comments follow the order in which provisions appear in the bill.

Purpose: We strongly support a preamble to the bill that provides an overall purpose. It identifies the shared and common purpose of all the partners in education, and is a strong and positive statement of our societal responsibility to students, their parents and the broader community.

Regulations and responsibilities of boards: This provision enables enactment of regulations to govern the roles, responsibilities, powers and duties of boards and board members. Because this relates so directly to our work and purpose, we recommend that the provision include a formalized commitment to consultation with trustee organizations whenever regulations arising from this proposed section are considered or amended. This would be similar to the language found in the Education Act, section 11.1.

Parent involvement committees: Parent engagement is a critical component of an effective school system, and the active role of parents is a key factor in student achievement. School boards should be consulted about any proposed regulations in this area, including how such committees will align with comparable committees that already exist in boards.

Duties and powers of school boards: Under duties and powers of school boards, we emphasize our commitment to a primary focus on students and their success, to school board accountability and to transparent reporting to parents, community and the Ontario public. These are key values for us and the cornerstones of our commitment to an excellent public education system.

We point out here that this section intersects with the amendments made to the Education Act in 2006 under Bill 78 relating student achievement. The combined provisions will lead to provincial interest regulations. The experience of our dialogue with the ministry over the summer on this matter underscores for us the critical role we need to have in contributing to the development of these regulations. We understand that the ministry intends to solicit this kind of contribution from all education partners.

We emphasize the need for our contribution because it is important that there be a whole-child approach to the concept of student outcomes; it is important that the accountability of boards for student achievement and student well-being be linked to and supported by a clear recognition of the responsibilities of the Ministry of Education and other levels of the government, and recognition of relevant conditions that are outside the control of school boards; and it is important that the measures to be incorporated into multi-year plans are realistic and do not adversely affect the intended programs designed to support students.

We urge a formalized commitment to consultation with trustee organizations and locally elected school boards in the development of relevant regulations.

Finally, in this particular section, we emphasize that a critical factor in a board's capacity to meet its requirements is having adequate and appropriate funding from the ministry to cover all the obligations for training school boards as well as program, policy and political support to meet the full range of needs of the children and youth for whom we carry a shared responsibility.

Duties of board members: OPSBA supports section 218.1. The described duties of board members are consistent with the role they currently perform. We do, however, propose two wording changes. With regard to board resolutions, we recommend the word "uphold" rather than "support." As elected officials, trustees should be able to communicate and explain board decisions, including why they may not have voted for a particular decision. We expect all trustees to uphold any final board decision. We support language that balances freedom of expression while reinforcing responsibilities.

In subsection (e), we recommend that the wording be changed to "entrust the day to day operations ... to the director of education and senior staff." This is more respectful and positive than "refrain from interfering in the day to day management of the board by its officers and staff." It should be noted that the provincial governance review committee did not support this negative sentiment.

Code of conduct and enforcement of code of conduct: Many school boards currently have policies in this area, and we believe that these codes already contribute to confidence in public education and respect for the integrity of the trustees in the community.

OPSBA supports provincial guidance regarding a code of conduct and its consistency across the province. A clear board-supported process is needed concerning sanctions and how they are imposed and enforced. These processes must also incorporate due regard for the elected role of trustees.

We understand that details on how such a provision would be administered will be found in regulations and ultimately be contained within individual board code of conduct policies. We strongly request a commitment on consultation with trustee organizations in the development of regulations.

In our submission to the governance review committee, we endorsed the concept of an external third party to investigate alleged breaches of conduct. This would respect the principle of finding of fact and consideration of appropriate consequences by a party that carries no political interest. We see this as a step to be pursued once everything has been done at the local board level to resolve the alleged breach. The governance review committee supported this suggestion and recommendation.

We have strong concerns about the inclusion of specific sanctions in subsection (3) of this part of Bill 177. The provisions would impose sanctions on elected trustees that have no parallel in the standing orders of Parliament and do not apply to any other elected official. This reinforces an approach we see in other provisions in the bill that point to a diminishment of the role of trustees

and an erosion of their status as individuals democratically elected to the office as the board of trustees. A trustee is an elected position that carries with it the understanding that the electorate will decide at election time its support for the effectiveness of a trustee.

With regard to First Nation trustees, we suggest that there should be recognition of the unique role of the First Nations community and the chief and council in the appointment of a trustee. This would include an understanding and written protocol between the First Nation government and the boards or ministry with regard to any decision affecting a First Nations trustee. There is a unique government-to-government aspect in this case.

To conclude, Bill 177 has inspired vigorous discussion among stakeholders in the education sector. We are confident that this presentation and our written submission bring clarity to the issues we have as school boards and as elected trustees.

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The amendments to the Education Act and development of regulations should reflect the consistency between a profound responsibility for student achievement and well-being and the stewardship that trustees undertake when they run for office. School boards were the first model of local governance established in Canada by European settlers. They have a long, effective and successful history, and that's because they work. They work for students and parents, the school community and taxpayers.

Thank you for listening. We look forward to a strong, consultative role in regulations that will flow from this proposed legislation.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Schenk, for your exactly timed remarks on behalf of the Ontario Public School Boards' Association.

ONTARIO CATHOLIC SCHOOL TRUSTEES' ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenters to please come forward: Ms. Peroni and Ms. Kirby of the Ontario Catholic School Trustees' Association. Welcome, and please introduce yourselves individually. Please begin.

Ms. Paula Peroni: Thank you. I'm Paula Peroni and I'm the president of the Ontario Catholic School Trustees' Association. I'm also a trustee with the Sudbury Catholic District School Board, and I was also very honoured to serve on the governance review committee as a member.

Ms. Carol Devine: I'm Carol Devine. I'm the director of legislative and political affairs with OCSTA.

Ms. Paula Peroni: Thank you for having us. As time constraints are not going to permit us to go over our entire brief, we're going to bring out some highlights for your information.

With respect to the purpose, OCSTA supports the addition of the preamble to the Education Act entitled "Purpose." We are disappointed, however, that the

preamble makes no specific reference to the fact that the publicly funded school system in Ontario is made up of four distinct and equal school systems: English public, English Catholic, French public and French Catholic. In order to reflect that reality, OCSTA recommends that subsection 0.1(3) of the bill be amended to read, "All partners in the education sector have a role to play in enhancing student achievement and well-being, closing gaps in student achievement and maintaining confidence in the province's four publicly funded school systems."

With respect to the regulations: roles, responsibilities, powers and duties of the board. OCSTA is pleased that the governance review committee consultations and these standing committee hearings have provided the opportunity to comment on potential changes to the roles and responsibilities of boards, trustees, chairs and directors of education.

Section 4 of Bill 177, however, leaves open the possibility of further changes to these roles and responsibilities, which could be made by regulation at any point in the future, with or without consultation. OCSTA finds it unacceptable that a simple regulatory change could alter the critically important governance role of duly elected school trustees and school boards. We believe very strongly that changes affecting governance deserve the public scrutiny and opportunity for comment that is inherent in the legislative process in the House. OCSTA therefore recommends that section 4 regarding regulations on responsibilities of board be removed from Bill 177.

OCSTA is pleased that the proposed legislation affirms the importance of the role of democratically elected trustees. We note, however, that this list of duties is by no means exhaustive. Trustees now carry and will continue to carry many additional responsibilities, including those which arise from the distinctive nature and mandate of the four systems.

Section 16 of Bill 177 requires boards to further the province's educational agenda, as specified in regulations made under section 11.1 of the act, by developing, reviewing, resourcing and communicating to supporters and employees comprehensive multi-year plans to achieve those provincial ends. This is a clear shift toward an increasingly centralized focus. It is essential that all school boards be adequately resourced to accomplish not only the ministry's goals but also those that respond to their own mandate and the needs of their local community. Boards must not be restricted in any way from pursuing their own local goals, as defined in their system mission developed in collaboration with their constituents. Funding allocations must be sufficient and sufficiently flexible to allow boards to pursue their distinctive objectives. That is a message we heard time and time again as we consulted around the province with the governance review committee.

OCSTA also has serious concerns about new clauses 218.1(d) and (e) of the act, which state that, "A member of a board shall,

"(d) support the implementation of any board resolution after it is passed by the board."

As a matter of law, a trustee has a fiduciary duty to their board. This duty requires a trustee to act honestly and in good faith, and to be loyal to and act in the best interests of the board. Given this well-understood obligation, we believe clause 218.1(d) is unnecessary and inappropriate. It goes well beyond the existing fiduciary responsibility and is inconsistent with the concept of freedom of expression. It provides for no exception and thus would appear to prohibit a member from moving a motion for reconsideration of any resolution previously approved by the board. Given the responsibility of a trustee to bring to the board table the needs and point of view of their local constituents, which can vary across the board's jurisdiction and change over time, this is unacceptable. OCSTA recommends that clause 218(d), regarding the duty of a member of a board to support the implementation of any board resolution after it is passed by the board, be removed from Bill 177.

Clause 218.1(e) of the bill states that a member of a board shall "(e) refrain from interfering in the day to day management of the board by its officers and staff." OCSTA agrees that the appropriate role of the board of trustees is in setting strategic directions, making policies and monitoring policy implementation, and not in becoming involved in the day-to-day operations of the board. However, a more positive restating of that intention would be more acceptable. OCSTA recommends that the language of 218.1(e) be amended to read, "entrust the day to day management of the board to the director of education."

OCSTA supports the provincial guidance regarding a code of conduct, and we look forward to participating in the process by which provincial guidelines will be determined. It is essential that the bill recognize the need for local boards to retain the autonomy to adopt or add to the provincial template as appropriate for their distinctive mandate and local circumstances and to decide on appropriate sanctions, should the code of conduct be breached.

The authority the bill gives the boards for enforcement of a code of conduct significantly exceeds the authority of any other publicly elected body in the province, including Parliament. The power of a board to sanction one of its members should be subject to some limit. Any sanction imposed must be reasonable and reasonably related to the nature and severity of the breach.

OCSTA does not support a reduction in a trustee's honorarium as a sanction for a breach of the board's code of conduct. We are concerned that this aspect of the bill would give a power to trustees that is not available to the Legislature or municipal councils. We recognize that the city of Toronto and perhaps other cities provide for similar penalties, but in that case there is a guarantee of objectivity in examining alleged breaches. It singles out trustees as having more power than is given to senior levels of government. Although we believe that trustees would exercise these powers with caution and fairness, we know that any law, once enacted, is subject to abuse. OCSTA recommends that subsection 218.3(3), item 2, regarding reduction of the honorarium as a possible sanction, be removed from Bill 177.

OCSTA is also concerned with the possibility that a board could use the process of sanction to actually remove one of its members from the office of trustee. The Education Act provides that a member of a board vacates his or her seat if he or she absents himself or herself without being authorized by resolution from three consecutive regular meetings of the board. Implicit in this provision is the concept of the voluntariness of the absence. If a board were to use the sanction to bar a member who has breached the code of conduct from one or more board meetings, such events could and may result in the disqualification of the member.

We recommend that Bill 177 be amended to provide that as a sanction for a breach of the board's code of conduct, the board's authority to bar a member is limited to, perhaps, a single regular meeting of the board. Any resolution barring a member from a regular meeting of the board shall be entered in the minutes and, regardless of actual text, shall be deemed to include board authorization for the absence of the trustee.

OCSTA agrees that a meeting of a board should not be closed to the public under subsection 207(2) only because a sanction is or may be imposed at that meeting. We agree with the need for elected trustees to be held accountable to their constituents and for board processes to be transparent. Nonetheless, we believe that it would be inappropriate and in fact contrary to privacy rights of the member generally that principles inherent in clause 207(2)(b) of the Education Act and the context of the Municipal Freedom of Information and Protection of Privacy Act for board discussions about an alleged breach of the code of conduct to publicly disclose personal information about a member of a board or any other person named in section 207(2).

The Chair (Mr. Shafiq Qaadri): You have about a minute left.

Ms. Paula Peroni: Thank you.

Such matters would have to be discussed in private. We therefore recommend that Bill 177 be amended to include the following: "That a meeting of the board shall be closed to the public in the event that there may be disclosure of intimate, personal or financial information with respect of the member."

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In the absence of a formal appeal procedure at the local board level, a member found by a board to have contravened the code of conduct would be forced to seek redress of an improper finding. Provision for the appointment of a neutral third party is not currently part of Bill 177, and we would request that that become part of 218.2, with respect to the code of conduct.

The OCSTA recommends, in principle, the establishment of board audit committees to act in such an advisory capacity to the board of trustees. Such committees are already in place and working well in many boards. We look forward to playing an active role in the consultations on the Ontario regulations that will specify the composition of those audit committees.

Thank you for allowing us to speak with you this afternoon and sharing some of our concerns.

The Chair (Mr. Shafiq Qaadri): On behalf of the committee, I'd like to thank you, Ms. Peroni and Ms. Devine, for your deputation and presence on behalf of the Ontario Catholic School Trustees' Association.

OTTAWA-CARLETON DISTRICT SCHOOL BOARD

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenters, Ms. Scott and Mr. Thomson, of the Ottawa-Carleton District School Board, to please come forward—with or without your Ottawa MPP, as you wish.

Mr. Rosario Marchese: Without.

The Chair (Mr. Shafiq Qaadri): Please begin.

Ms. Lynn Scott: Thank you very much for allowing us to address you this afternoon. The Ottawa-Carleton District School Board certainly supports the stated purpose of Bill 177; that is, to ensure a strong public education system. It is perhaps emblematic of the roles we play that our director of education, Dr. Lyall Thomson, is here today with me, Lynn Scott, chair of the Ottawa-Carleton District School Board, to present some of our thoughts about this very important piece of legislation.

Our first concern is that we want to see the province get this right to start with, at the outset. There's always a tendency to place all the details in regulation, but we see the legislation itself as setting the policy framework for those regulations. To that end, we believe it is very important to have the basic principles laid out very clearly in Bill 177.

With regard to student outcomes and board responsibility for student outcomes, in the absence of the regulations, it is really difficult to understand what you actually mean by "student outcomes" in this legislation. This is a beautiful example of where we believe that clarification in the legislation itself would be beneficial, because that, in turn, establishes the scope of those regulations when the province comes to create them.

In our district, we certainly are well aware that student outcomes encompass a wide variety of achievements. This is not something that can be measured simply by EQAO test scores. EQAO testing provides no data whatsoever on the accomplishments and achievements of students who have been exempted for a variety of reasons. It does not fully take into account the extent of the impact of special education, English-as-a-second-language and socio-demographic factors that may impact how any particular student achieves.

We believe that we would see the province and school districts working together to develop student achievement measures that evaluate the whole student, simultaneously working together to develop plans, monitoring mechanisms and resource allocations so that we can reach those province-wide and board-wide goals for student learning.

We strongly support multi-year planning. Multi-year planning is nothing new to our district; we believe it is an

important factor. To this end, we would look for provincial co-operation in trying to provide more coordination of grant announcements and so on, so that our planning would be facilitated over a longer period of time.

With regard to duties of board members, you have heard from those who spoke before us today. There certainly are concerns in the Ottawa-Carleton District School Board about these. Again, the issue is primarily clarity of meaning. We do not support simply requiring trustees to support board resolutions without their having freedom of expression on behalf of their constituents, nor do we believe that board members should be required to support any decision that might be taken contrary to legislation or regulation, having heard already from the director or other members of staff that this is not the advice of those who understand the statutes and regulations.

We therefore would like to see, at the very least, a save-and-except clause. Even better, we would like to see something that explicitly states that trustees have the right to convey constituent concerns to express their disagreement. Even though they uphold that board resolution, they still have a responsibility to serve as representatives of their constituents.

Similar issues arise with regard to the code of conduct. Where board members now have a selection of sanctions available to us, this legislation would extend those and put in more specificity. Yet we have to say that the use of sanctions beyond censure must still respect the fact that it's the electorate that decides its representative, and stop short of impairing the representative role a board member has.

Some of the technical issues are explained in our written submission, but I would also point you to a couple of pieces of the legislation that would potentially cost boards some money, knowing that money is an important thing, the first of these being references to discontinuing the issuance of debentures by school boards. Given that our banking fees are part of an overall package that depends on banks having the possibility of fees from long-term debt placement, without that possibility, it is very likely that other banking fees would rise, and this of course represents an expense we do not have at present.

Similarly, we need some clarification around the concept of the audit committee. Our board has had a very successful audit committee, conducting internal value-for-money and other audits for a good number of years. Yet we're now looking for external representation. Bill 177 sets the stage for having, and possibly even requiring, external representation. We are not clear, from the legislation, why external representatives are considered necessary, and we're also not clear what the province's vision is for where these representatives would come from, whether there would be reimbursement and whether or not there would be funding provided to allow a very functional audit committee to do its work. Again, it's a cost issue.

Fundamentally, we believe that it's important to articulate a clear and common understanding of how student achievement is defined. We believe that many parts of this legislation are good and necessary. We support greater clarity in roles and responsibilities, but we do regret that it appears the government intends to provide that clarity through regulation rather than through legislation. As I said at the beginning, it's the policy framework for the regulations that you are establishing in Bill 177, and certainly there is considerable concern when we are facing some unknowns we have not seen in the past. We respectfully request that you consider our written submission and secure some changes to improve Bill 177, a step in a good direction that we support, but with need for clarification. Thank you very much for your time.

The Chair (Mr. Shafiq Qaadri): Thank you. We have 40 seconds per side, beginning with Ms. Witmer.

Mrs. Elizabeth Witmer: Thank you so much for your presentation. You say at the end, on page 7, that "the timing ... and the proposed provincial interest regulation has created fear about the intentions...." What do boards perceive the underlying intention is?

Ms. Lynn Scott: I think that boards are certainly concerned about further erosion of boards' ability to act autonomously on behalf of their constituents to address local needs in education.

The Chair (Mr. Shafiq Qaadri): Mr. Marchese.

Mr. Rosario Marchese: There's just not enough time. Oh, we have 45 seconds each?

The Chair (Mr. Shafiq Qaadri): Forty-five seconds each.

Mr. Rosario Marchese: There are so many parts of it. The one that really offends me is the one on conduct of members of school boards. But I really want to make a comment about socioeconomics, because that does impinge on learning. You say "may," but it does impinge on learning, and there's no talk about how mental illness or special education problems or poverty and how that affects learning and how it affects teachers, in terms of being able to do their jobs. So you say "may," but you really want to say "does impinge," don't you?

Ms. Lynn Scott: I think that what we do want to say is that boards need to be able to consider as many factors as impact student achievement in their district so that we can attempt to address all of those student needs.

The Chair (Mr. Shafiq Qaadri): I'll need to intervene there, Mr. Marchese. Ms. Sandals.

Mrs. Liz Sandals: Thank you very much, Ms. Scott. I'm looking at page 3, and I hear what you're saying about "uphold" versus "support," but you then went on to talk about a save-and-except clause. I wonder if you could explain a little bit what you were talking about there.

Ms. Lynn Scott: Quite simply, in the definition of the duties of the director of education, there is an expectation that directors would advise boards where things were contrary to regulation. It is historic fact that some boards have, from time to time, approved resolutions that were contrary to legislation or regulation. In such cases, a save-and-except—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals, and thanks to you, Ms. Scott and Mr. Thomson, for your deputation on behalf of the Ottawa-Carleton District School Board.

BLUEWATER CITIZENS FOR EDUCATION

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter to please come forward, Ms. McDougall of the Bluewater Citizens for Education. Welcome, Ms. McDougall. Please begin.

Ms. Lesa McDougall: I would like to thank the standing committee for giving us the opportunity to present today. My name is Lesa McDougall. I represent Bluewater Citizens for Education. I'm a parent, first and foremost, a former teacher, and a very concerned citizen.

Bluewater Citizens for Education formed in April 2009 as a result of experiences shared by parents, community members and staff throughout the district, namely, frustration with a lack of accountability, transparency and good governance at the board level.

Bluewater District School Board is located in Grey and Bruce counties and provides instruction to approximately 19,000 students. Our board, if you will, is a test case of exactly what Bill 177 is intending to address, I believe.

Overall, we're supportive of the act's stated purpose to provide students with the opportunities to realize their potential and to develop skills. Amendments to the Education Act have been highly anticipated and long awaited, and we appreciate the acknowledgement that change is necessary within the realm of education in Ontario. We believe that changes to the act will result in a more effective education system for our students.

We're particularly pleased with an interest in a strong public education system that introduces the bill; the establishment of parental-involvement committees as advisory bodies; the clarity in roles of trustees and directors; and provincial consistency and codes of conduct for all.

However, there are areas of the bill where the intent of the legislation does not go far enough, in our opinion, or does not target the appropriate bodies, or where there is little substantive change in order to produce the desired outcome of accountability, transparency and good governance.

We are saddened by the fact that this bill seems to erode, in part, the trustees' status as individuals who are democratically elected and who are meant to represent their constituents. The undermining of the role of trustee with board administration to address parental and student concerns is of grave concern to us.

We're concerned about the accountability for student achievement that rests on the boards that are based on test scores, which of course do not give the whole picture; we're concerned about the lack of accountability for student achievement at the ministry level; we're concerned about the punitive nature of the bill, should boards fail to meet arbitrary, artificial, numerical goals

which do not reflect student achievement solely; and we're concerned about the absence of accountability at both the board level and the provincial level.

Some of the earlier presentations have already dealt with some of the things I was going to discuss, so I'm going to pass over those and just articulate briefly why we in Bluewater are so concerned about what is going on now in our board.

We have had children who were assaulted on school property, and protocols that were put in place were followed, to no avail. Parents went to boards, parents went to superintendents, parents went to directors. We followed the chain of command. We went to the Ministry of Education, we went to the Ontario College of Teachers, we went to the Ombudsman for Ontario, to no avail. I was told repeatedly to go back to my trustee, who repeatedly told me that the board said that there would be no more discussion on my matter. This has been echoed in other situations as well.

Of late, however, I've learned that I'm not the only parent who has endured what our family has endured. Thanks to MPPs Bill Murdoch and Carol Mitchell, the situation in Bluewater was brought to the fore and the ministry was asked to support. Ms. Wynne sent support, but accountability does not come with surveys, meetings and denial that there are no problems. Mine is not, sadly, the only story that illustrates this lack of governance, accountability and transparency.

We are therefore suggesting that there needs to be an objective third party, as has been alluded to previously today. We recommend that amendment 283.1 include the Ombudsman for Ontario and his ability to intervene if complaints focus on acts or emissions that would render students unsafe. Further, if boards have failed in their duties as outlined in the Education Act, the Ombudsman would have jurisdiction.

To ensure real accountability, transparency and integrity in education, there needs to be governance. The Ministry of Education's position that school boards are duly constituted corporations and therefore outside its jurisdiction appears to be in conflict with the ministry's own mandate of oversight of said boards. However, who holds the ministry, then, to account but taxpayers who will vote in the next election, potentially years away?

We have found that there continues to be an erosion of the public's faith in the Bluewater District School Board. Declining enrolments are not nearly a result of changing demographics, which are somewhat universal, but conscious decisions made by parents concerned about the quality of public education. As parents, teachers and community members, BC for E wants to continue to be supportive of public education which does seek to provide the kind of education that produces caring, knowledgeable and skilled citizens who contribute to society—education that puts students first.

However, there are examples of impropriety in our system, which, if not dealt with now, will seriously further continue to erode public confidence. What happened to some of us in Bluewater could happen in any

board in Ontario, potentially, but by the grace and the good leadership of many, it has not.

The education of our children, though, should not be left to the discretion of a few. It needs to be ensured with clear acts and laws which govern school boards. Otherwise, what has and is happening in our area will happen in other parts of the province. Accountability needs to be restored and good governance implemented in a board that remains in a self-professed crisis and ensure that this never happens again.

I hope that I've left enough time for questions.

The Chair (Mr. Shafiq Qaadri): Certainly. About a minute and a half per side, beginning with Mr. Marchese.

Mr. Rosario Marchese: Thank you, Lesa. I was one of the members who heard your deputation where you and four other parents talked about child assaults or abuse, sexual in nature. I have to admit that there's nothing in this bill that would ever deal with the failure of the system, in terms of a trustee not listening, a principal not listening, a board not listening. I'm not quite sure where the ministry stood in relation to the particular issue you raised. But-

Ms. Lesa McDougall: They told me to call 911.

Mr. Rosario Marchese: Right. I think the system fails us from time to time, and I'm not sure how you fix that. I do remember the bill that I had introduced, which was, I think, Bill 90 or 91, which would authorize the Ombudsman to be able to have the power to address issues of your sort. I think that that's the way to go. I really do believe that he has played a tremendous role in doing a serious study of an issue that you raise and then forcing the government to be able to respond and make them accountable. I think you supported that, if I recall.

Ms. Lesa McDougall: Very supportive of that, yes

Mr. Rosario Marchese: You support it still.

The Chair (Mr. Shafiq Qaadri): I'll need to intervene there, Mr. Marchese. To the government side, Ms. Sandals.

Mrs. Liz Sandals: Just for the record: In fact, the Auditor General already has the authority to review school boards in his annual audits-

Mr. Rosario Marchese: It's not the same.

Ms. Lesa McDougall: My recommendation on page four means to include it in the act and amend section 169 to include specifically accountability annually, or semiannually, or even periodic or rotating audits of the school board. I didn't see that in Bill 177.

1450

Mrs. Liz Sandals: It's in the Auditor General Act, is what I was saying. He has the authority.

Ms. Lesa McDougall: Right. It would be very good to have it included in Bill 177 too.

The Chair (Mr. Shafiq Qaadri): To the PC side, Ms.

Mrs. Elizabeth Witmer: Thank you very much, Lesa. I recently had the occasion to meet with four parents regarding bullying and unsafe situations in schools, and despite what the government believes their bill has accomplished, it's obvious it hasn't. I just received a letter on Friday at home from a mother whose child had to move from one secondary school to the other because the school was not able to provide protection for her, and it was obvious there was no accountability.

I think this is a huge issue, and I appreciate your stepping forward. I believe this issue needs to be addressed. We simply can't have students who are afraid to go to school and parents who are constantly out there advocating on behalf of their children, trying to do the best they can. If that's to extend the jurisdiction of the Ombudsman to include school boards, so be it, but our children must be safe and feel safe.

Thank you very much for coming forward today.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Witmer, and thanks to you, Ms. McDougall, for your deputation on behalf of Bluewater Citizens for Education.

ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenters to please come forward: the OSSTF, Ontario Secondary School Teachers' Federation, Mr. Coran and Mr. Brockwell and others. Welcome, and please begin.

Mr. Ken Coran: Thank you. Yes, my name is Ken Coran, and I'm the president of the Ontario Secondary School Teachers' Federation. With me is Lori Foote, who is our director of communications/political action and was formerly from our education services department, so she is well versed in all aspects of our organization.

When I look around the table, there's a lot of experience around this table dealing with educational issues. We were next door watching for the last few minutes. I think a lot of concerns have already been voiced, so I will try to streamline the presentation. It's only two and a half pages, which, for OSSTF, is somewhat of a record in its brevity.

You do have a lot of documentation already with regard to our position on Bill 177, and you're all aware that first reading passed in the first week of May. On June 30, there was a memo that went out with regard to the provincial interest regulations or some potential inclusions in that. There was a request that people provide submissions by August 30, which our organization has done. So there is a tremendous amount of paperwork already on those regulations.

What we thought we would do today is very clearly and succinctly outline what our main two concerns are with regard to this bill. First of all, it's well intentioned, as all bills are well intentioned, but the problem comes in the clarity and the explanation and the procedures that accompany the intent of the bill. What we see as a potential problem comes along with the annual reports. When you looked at the provincial interest regulations, you saw that the annual reports contain approximately nine different items. The work that's associated with commenting on those nine items—some of it is objective;

some of it is subjective, so it very much has to be clarified so that we could actually achieve the results that we are hoping to achieve.

The ultimate goal of all of this is obviously to support student success, which then becomes the big problem. Time and time again, we hear reference to student achievement and different criteria that can be utilized to determine student achievement, and we hear of things such as credit accumulation, EQAO test scores and graduation rates. These are all very measurable, but they really don't give the true definition of student achievement.

Anyone who has been in the education sector for a long period of time knows that, as time passes, you run into X students, some of whom were very high achievers with regard to test scores, some who were a little bit more challenging in the classroom, some who were great athletes and some who were great musicians. So there's an entire diversity of what means something to students and what they become after their secondary school graduation or, in some cases, non-graduation.

I had a situation like that on Saturday night. I was at a restaurant where a student who was probably suspended more than any other student in one of the secondary schools I taught at yelled at me from across the restaurant and said-and I'm not trying to blow my own horn-"You taught me a lot." This student didn't pass a test, ever. He was a Canadian champion arm wrestler, and that was his claim to fame, but what he learned in the process of playing sports and being in the classroom and being with other peers was how to gain the respect of others, and in turn also how to be nice to other people and be polite and be an honourable citizen. Those sorts of things aren't measured by EQAO test scores, by the number of suspensions—the number of suspensions would have proved this student to be a failure, but in fact, he was not a failure. He was a great gentleman, that night anyway, and his kids were the same, so he learned a lot.

What we are saying is, we need to really come up with a definition of student achievement, and I don't think it's going to be easy. I think the thrust of our concerns with Bill 177 deals with trying to come up with that definition of student achievement. We know that subsection 11.1(2) of the Education Act gives the minister some powers with regard to the development of regulations. You can see that our recommendation at the end of page 3 is that we would hope that representatives from our organization would be included in some kind of consultation whereby we can hopefully help in the development of student achievement or a definition if that is something that is doable.

I wanted to also say that some of the indicators that were proposed in these provincial interest regulations really don't take into consideration—and I heard Mr. Marchese mention it—that we have students at risk and we have special-needs students, and sometimes achieving certain criteria is impacted by the types of students we have. Those students generally require a lot more resources and a lot more individual attention, and nowhere in this process to date, and I'm sure it will be clarified, does

it state what some of the repercussions of not meeting some of these criteria are.

We know that a board will come up with a plan, that schools will come up with a plan, and if we don't make improvements, what happens is, quite possibly a supervisor could be sent to the school board. But what happens if that supervisor isn't successful? It doesn't go past that stage, so it needs a lot more development before any kind of implementation, and that's the purpose of these kinds of meetings: to get this kind of feedback, digest it and see what the next steps are.

I want to quote a couple of items, because we know how Bill 177 came about. There was, first of all, a great consultation with regard to a governance structure review. Here are some of the quotes that were in that initial paper. A school board stated that "accountability implies some sort of measurement of our 'product,' the young people we serve. While testing and other tools used to measure student achievement are useful, they can never tell the whole story. Student success is more than graduation rates and test scores." That relates back to the earlier story I told you of my Saturday night dinner.

The committee's report also stated that "parents are particularly adamant that student success should not be defined exclusively by provincial assessment scores."

What we believe in this whole process is that we want to make it fair to everyone, we want to make it doable by everyone and, overall, we want to make sure that the integrity of a credit is maintained through this process.

I think that sums up our main concerns. As I said, there were a lot of other ones included in the earlier submissions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Coran. There are about 40 seconds per side, beginning with Ms. Sandals.

Mrs. Liz Sandals: Thank you very much for your presentation. I was listening really carefully and I think what I heard was that your concerns are around the provincial interest regulation, not directly around Bill 177.

Mr. Ken Coran: I don't know if you could separate it from Bill 177. You'd have to look at it in its entirety, but Liz, we really are concerned about the student achievement component and what that definition is.

Mrs. Liz Sandals: And as you know, the minister has indicated there will be further consultations.

1500

The Chair (Mr. Shafiq Qaadri): Ms. Witmer.

Mrs. Elizabeth Witmer: Thank you very much, Ken and Lori. As a secondary school teacher, I actually found that your concerns are very similar to my concerns. I guess I'm not sure, to this day, what the purpose of this is. I hope it's not to be a buffer between the government and local communities, and that boards are going to lose their ability for any real decision-making. That's really quite frightening.

I share your concern about the definition of student achievement. Having taught special-needs children myself, certainly their achievement is defined quite differently. I hope the government does pay heed to the

concerns that have been raised here, and that they'll take a little more time before they approve—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Witmer. Mr. Marchese.

Mr. Rosario Marchese: Just quickly, on the purpose: The first purpose is, "A strong public education system is the foundation of a prosperous, caring and cohesive society." How can you disagree? It's obvious.

The second is "to provide students with the opportunity to realize their potential and develop into highly skilled, knowledgeable, caring citizens," blah, blah, blah. It's a given; I'm assuming that's what we're doing.

I think the third one is the real purpose of it: "All partners in the education sector have a role to play in enhancing student achievement and well-being" and "closing gaps." It seems to me that it leaves you the responsibility to close the gaps. No matter how you do it, whatever the problem, it's your problem, not the government's. Is that basically it?

Mr. Ken Coran: That's correct, and that's why we said we want this process to make sure credit integrity is of utmost importance, so that we have a true product that represents what education can offer.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Coran and Ms. Foote, for your deputation on behalf of the Ontario Secondary School Teachers' Federation, OSSTF.

DUFFERIN-PEEL CATHOLIC DISTRICT SCHOOL BOARD

The Chair (Mr. Shafiq Qaadri): I would now invite Mr. Pascucci and Ms. Abbruscato of the Dufferin-Peel Catholic District School Board. Welcome. I invite you to please begin.

Mr. Mario Pascucci: By unanimous board motion, we present our document on Bill 177, which I'll present right after our presentation.

With me today is Sharon Hobin, trustee, Dufferin-Peel; Thomas Thomas, trustee, Dufferin-Peel; and Tony da Silva, trustee, Dufferin-Peel: four of 11 trustees or, if you wish, 37%.

The board of trustees of the Dufferin-Peel Catholic District School Board believes that the ultimate goal of our Catholic school board is, through partnership between church, home and school, to provide opportunities for our students to become productive citizens, which will benefit our cities and our country. Student achievement is always at the forefront of any decisions the board has made as elected representatives of our wards and as one governing board.

Response to Bill 177: The formal role of the trustee goes back to the Public School Act of 1807. While this act formally established the role of public trustees in Ontario, before 1807, men and women were working hard in their small towns to build schools and provide education for their children, many times using their own money. So we follow a long line of historic heroes who sacrificed home and finances to provide education to the public.

It is because of this long-established history of representational trustee governance that we come to you today with grave concerns regarding Bill 177 and the resulting regulations that are to follow. It is a grave concern of our board that, as Bill 177 currently reads, a regulation will provide the minister the opportunity to change the roles and responsibilities of boards, trustees and directors without any kind of consultation. This flies in the face of representational governance. Our constituents elect us to represent them, and if our role is constantly changing, it will be confusing to parents, ratepayers and school boards.

A trustee does not act alone but as part of a collective whole, which is the board. He/she, however, needs to be able to voice concern and disagreement with the board's position with respect to any matter, as long as the trustee respects the decisions of the board and is able to reopen any matter, provided it is done within the accepted procedures and bylaws of that board.

Student success should be a key priority for school boards. The board of trustees cannot be held accountable for the achievement of specific provincially mandated standards in literacy, numeracy or graduation rates across their system. Trustees are not educators, nor do they provide direct service to the classroom.

Boards are responsible, however, for ensuring, through the director of education, that a comprehensive plan is designed, monitored and revised as necessary to ensure that all students are provided with the instruction and services required to help them achieve maximum potential. Ultimately, school boards are held accountable by the electorate for their performance and outcomes.

On accountability, we have great concerns that any language written into the regulations should avoid student outcomes and measures that determine supervision. While we have great respect for our current Minister of Education, we do not have any way of predicting how or why such regulations could be used in the future. Working toward increased student achievement must be done in partnership with school boards.

Trustees should not be held to a higher level of accountability than other branches of elected government. This is not good public policy. Intervention by the minister should be supportive, not punitive. Support could include sharing best practices and possibly additional funds. Any ministry intervention must involve partnership, collaboration and dialogue.

Many factors can impact a student's performance. This is why dialogue is so important. Boards must report on their performance to their communities and to the Ministry of Education on a regular basis. Boards should review their EQAO results annually and, based on these results, report to their constituents and set objectives for the year ahead.

In Dufferin-Peel, we have embarked on a strategic review of the Dufferin-Peel board as an organization, a gutsy move that will result in a five-year plan to serve our communities, fight declining enrolment and ultimately increase student achievement.

Role of director: The director of education should not have a dual reporting relationship to the board and to the Minister of Education. The director of education must follow the Education Act, ministry and board policies and bylaws, and the laws of the land, but must answer to the board of trustees who, in turn, answer to the Ministry of Education. Boards cannot authorize a director of education to implement a policy that contravenes ministry directives.

There will be times when board priorities do not reflect, or may even be diametrically opposed to, a government political focus. In these situations, the director of education should be taking direction from, and supporting, the board's priorities.

Code of conduct: With respect to the code of conduct, it is especially important that Catholic trustees recognize the important role they play, given the fragile nature of fully funded Catholic education, and behave accordingly. Nonetheless, it is unfair if trustees are held to greater accountability and a higher standard than other elected officials. It should be the goal of this committee to develop regulations that will be supportive and not punitive.

I quote from page 132 of our publication, Catholic Education in Dufferin Peel: A Story Worth Telling: "Education is a two-way street. The link between teacher effectiveness and student input is strong. Across the province, Dufferin–Peel is regarded as 'an exciting place to teach.' And this is due in no small measure to the positive interaction between teacher and student. It is to both that we must attribute our success. Students are the lifeblood of our school system. Dufferin-Peel is vital and thriving."

We look forward to a continued positive relationship with the province, the ministry and with our stakeholders. We thank you for your time and wish you the very best in your endeavours.

The Chair (Mr. Shafiq Qaadri): Thank you. About a minute and a half per side, beginning with Ms. Jones.

Ms. Sylvia Jones: You made reference that if Bill 177 is passed as is, you believe trustees would be held to a higher standard than other elected officials. Can you expand on that?

Ms. Sharon Hobin: One example was actually said to me by a ratepayer. They said, "When the province provides funding to a municipality to do infrastructure, do they actually go in and make sure they actually filled every pothole they were going to fill?" I guess we, as trustees, feel we are going to be held to a higher standard than perhaps you or a city councillor. We have to answer to the ministry through the Education Act, but we have to answer to the people who elected us. We feel that's the ultimate responsibility.

The Chair (Mr. Shafiq Qaadri): Mr. Marchese.

Mr. Rosario Marchese: Thank you, Mario and thank you all; it's good to see all of you again.

I have to tell you that this bill offends me. This bill centralizes power in the hands of the minister and the ministry unlike anything I've seen before. I find it par-

ticularly offensive, on page 6, that they say a board member "shall attend and participate in meetings." It diminishes you; you "shall attend," as if you're kids. The second one says to "support the implementation of any board resolution," meaning all, which suggests you are not elected; you're just little kids running around and that you're not doing your job right. I think you would find this offensive. Do you not? Don't hold back.

Mr. Tony da Silva: We're not sure of the intent, but we're concerned—

The Chair (Mr. Shafiq Qaadri): That might be construed as leading the witness, Mr. Marchese.

Mr. Tony da Silva: We are concerned that, going forward, this could be misinterpreted in its current state if not addressed, and really would hold us to a higher accountability than any other elected official, as my colleagues have said.

Mr. Rosario Marchese: Absolutely. What about the snitch clause on page 7, which says, "A member of a board who has reasonable grounds to believe that a member of the board has breached the board's code of conduct may bring the alleged breach to the attention of the board." It's a snitch clause. What do you think about that? Don't you find that offensive—anyone?

Mr. Mario Pascucci: Yes. Look, we're all big boys and girls.

Mr. Rosario Marchese: You think?

Mr. Mario Pascucci: The fact of the matter is, we as elected trustees—we have as a board taken the initiative to meet with other governing bodies, including our city councils etc. We are there—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. To the government side, Ms. Sandals.

Mrs. Liz Sandals: You spoke about directors of education who currently in the Education Act—their appointment must be by both the ministry and the board. So that's what the act already said. Then you said that this will give them dual reporting responsibility, and I'm wondering how you read that into the act.

Ms. Sharon Hobin: They way we've read it into the act—and I don't have the exact section. But it seemed clear to us that it was going to put the director of education in a position that if the board wasn't following all the policies and regulations—and we understand that the director now has to do that, but we felt it was putting the director in a very awkward position. Right now, in Dufferin-Peel, we work as a team, and we feel that the director of education, bottom line, has to follow the Education Act, and so does the board. But we feel that we would like our director of education to answer to the board, like in any other organization.

Mr. Mario Pascucci: No organization could answer to—or no individual could answer to two masters. It's just virtually impossible.

Mrs. Liz Sandals: Sorry, I don't see the change in the act. My experience as a trustee was that the director always did inform the board if there was a motion on the floor which would have contravened the act. In fact, I

would have been extraordinarily displeased with my director if they didn't-

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Sandals, and thanks to Mr. da Silva, Mr. Pascucci, Mr. Thomas and Ms. Abbruscato for your deputation on behalf of the Dufferin-Peel Catholic school board. I would now invite out next presenter—

Mr. Mario Pascucci: Mr. Chair, I want to thank you very much. Anna Abbruscato, unfortunately, due to a family commitment, couldn't make it, so it's Sharon Hobin.

Ms. Sharon Hobin: Sharon Hobin.

The Chair (Mr. Shafiq Qaadri): I'm sorry. Thank you.

MICHAEL BAILLARGEON

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter, Mr. Baillargeon, who comes to us in his capacity, I presume, as a private citizen; it says "elector." I'd welcome you. We'll certainly distribute your written materials. Please begin.

Mr. Michael Baillargeon: Mr. Chairman, committee members, guests, ladies and gentlemen, good afternoon. My name is Michael Baillargeon. You may recognize my name as an individual elector who filed a successful application under the Municipal Conflict of Interest Act against a Toronto Catholic District School Board trustee, resulting in his seat being declared vacant. Baillargeon v. Carroll is the most important decision involving a school board trustee since the Municipal Conflict of Interest Act was first proclaimed in 1972.

I am here this afternoon to relate some of the experiences of the last 16 months, lessons learned, and to make recommendations that I believe are important to making the Education Act more effective.

A section of the Education Act requires that in their declaration, all trustees, amongst other things, solemnly declare they will "disclose any pecuniary interest, direct or indirect, as required by and in accordance with the Municipal Conflict of Interest Act." That being said, the Education Act has incorporated the Municipal Conflict of Interest Act as its enforcement arm.

To be clear, that's where the problem begins. The Municipal Conflict of Interest Act is flawed and requires amendment. It has no teeth and is fundamentally impotent. This problem is exacerbated when you have a minister who has gone missing and has been wilfully blind in its enforcement. I'll speak more about that later. For the present, there needs to be serious, constructive debate on the Municipal Conflict of Interest Act's effectiveness. If the Minister of Education is going to continue to represent the Municipal Conflict of Interest Act as a vehicle to enforce trustees' conflicts of interest, then it must be amended.

The act cries out for reform. First proclaimed in 1972, it has been 19 years since it has been amended. It is in definite need of an overhaul. The advance of communications alone dictates that we implement reform.

The Municipal Conflict of Interest Act is an invitation to contravention. My experience since May 16, 2008, when I first learned of the allegations against TCDSB trustees contravening the act, is that the reason there are so few applications filed is not that there have been few contraventions but that, in its present circumstances and form, the act is more likely to deter enforcement than it is contravention. Let me repeat that: In its present circumstances and form, the act is more likely to deter enforcement than it is contravention.

The relationship between the Education Act and the Municipal Conflict of Interest Act requires not just amendment but clarity of purpose. There are numerous problems in the application of the Municipal Conflict of Interest Act as it applies to trustees, some of which I have outlined below.

The Municipal Conflict of Interest Act is permissive. Contraventions "may" be, not "shall" be adjudicated. Thus, no matter how serious the offence, there is no guarantee it will ever be adjudicated. Contrary to the opinion forwarded from political staff at the Ministry of Education, the minister does have an obligation to enforce the act as it presently relates to the Education Act. As written, 209.1 is a statute under the act, and as long as it remains, the obligation and responsibility for its enforcement remains with the minister.

The term "elector" is being abused by those in governance as an excuse not to enforce the Municipal Conflict of Interest Act. The ministry and school boards refuse to get involved because, in their words, it's up to the elector to enforce the Municipal Conflict of Interest Act. Well, it's time for an epiphany of sorts. The word "elector" was meant to be all-encompassing; inclusive, not exclusive.

As for a personal decision of involvement, no one gets a pass. A witness to wrongdoing or contravention or anyone becoming aware of wrongdoing or contravention may file an application. The act does not state that only an elector may file an application, excluding the Minister of Education, a director of education or any other board or ministry staff. It definitely does not exclude trustees themselves from filing applications. The point is, it excludes no one.

For an elector who, under the act, decides to challenge a trustee with an application before a Superior Court judge, a significant burden accrues, and none more daunting or unfair than absorbing the cost of prosecution. Justice comes at a heavy cost. In my case, the cost of removing a guilty trustee under the Municipal Conflict of Interest Act was in excess of \$80,000. The defendant had legal defence insurance paid by the school board, and had he won, all his costs would have been covered.

You are perceived as challenging two levels of government: the local school board and the province. The immediate effect of this is being cast in an adversarial position—you're the bad guy. Bluntly stated, they will position you as the enemy.

In my case, filing an application meant the following: I was immediately treated as an adversary; the supervisor refused to meet with me; I was blamed for damaging Catholic education; the majority of trustees blamed me for the demise of the trustee; and no matter how often I was promised a response, my letters to the minister, to this day, remain unanswered. My requests for co-operation and assistance were answered with actions that clearly bordered on misrepresentation and obstruction. No matter how important the need or objective or how hard I tried, I received absolutely no help from the ministry. I was treated as a threat. I was patronized and generally treated with disdain and disrespect.

The question is now just how serious a contravention of the act need be before a minister feels obligated to take action. The Minister of Education should have done something about the serious allegations of conflict of interest that permeated the Toronto Catholic board last year and in the present. The act needs to be amended to ensure that she does so in the future.

For the record, the Minister of Education knew, should have known and knows of the allegations that some Toronto Catholic trustees had contravened the act. On six different occasions, these contraventions were made available to her.

The summary and recommendations: I've consulted with numerous lawyers, and all of them state the obvious: The Municipal Conflict of Interest Act, in relation to the Education Act, is flawed. In its present form, it is unlikely that there will ever be an elector launching a case against a trustee for a conflict of interest. The enforcement of the Education Act should not be left solely in the hands of private citizens, the so-called elector. There must be a more rational ability to enforce conflict of interest.

There must be accountability and consequence to contravening the act. Enforcement cannot be left to chance or, as with the present process, impracticality due to cost. A trustee is in a position of public trust and must abide by their declaration. Not to do so must have severe consequences, and therefore, there must be enforcement of the act.

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Enforcement cannot be optional. "May" and "shall" have to be reasonably applied. The minister may have an option; integrity does not. The prescribed six-week limitation period on filing an application is just that—limiting—and needs to be amended to allow for a longer time frame to seek remedy.

Under the present act, private sessions of board meetings would seem to preclude enforcement—a circumstance requiring remedy.

Applications should have access to funding resources, and the Minister of Education must have a direct link to enforcing the act. The Education Act must be amended to rectify the flaws.

The Minister of Education must put politics aside and take responsibility for the enforcement of the act.

There's more, but with today's time constraints, I recognize this will have to do. Just the same, it's a start. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you. There's 30 seconds per side, beginning with Mr. Marchese.

Mr. Rosario Marchese: So, Michael, number 4 there, "Applications should have access to funding resources," what you're saying is that if a citizen wants to take a trustee to court on the basis of a conflict, you should have the money to be able to do so. Is that what you're saying?

Mr. Michael Baillargeon: I believe there should be some type of panel set up that deals with the applications or the possibility of conflict of interest prior to an application being taken. It should be a panel that's set up with governance so that if there is a reasonable contravention, then that should be—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. Ms. Sandals.

Mrs. Liz Sandals: If Mr. Baillargeon wants to continue with his description—

Mr. Michael Baillargeon: What I'm saying is that right now a person has six weeks to take an application out, from the time you hear about it. It's six years to file an application, but the individual finds out within six weeks. He then has to file the application within that time frame. What I'm saying is, it's his resources. The act leaves it up to an individual—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals. Ms. Jones.

Ms. Sylvia Jones: I don't have anything further so if you want to finish your answer.

Mr. Michael Baillargeon: The act leaves it up to an individual to file the application, and it's ridiculous. I mean, it should not be left up to an individual citizen. If it's part of the Education Act and if the Education Act wants to enshrine the Municipal Conflict of Interest Act, then it's a statute within the Education Act and the Minister of Education should take responsibility and she should be responsible for—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones, and thanks to you, Mr. Baillargeon, for your deputation and written materials.

JOSH MATLOW

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter to please come forward: Josh Matlow, trustee of St. Paul's. Welcome. Please begin.

Mr. Josh Matlow: Thank you very much, Mr. Chair and committee members, for allowing me this opportunity to address you today.

I want to be very clear off the start that I'm not here representing the Toronto District School Board. My board will make a deputation, I understand, within the next couple of days. I also have no intention or interest to repeat many of the deputations that you will hear from our fellow school boards, along with our related associations.

I'm here to give you a candid analysis as far as I, as an individual trustee, can give you about some specific and very important sections of this bill that I believe we need

to take another look at and potentially have further consideration about their wording.

Allow me to begin by going to the first page, where, number one, the Education Act is amended by adding the following section, and let me go to section 1, "A strong public education system is the foundation of a prosperous, caring and cohesive society." Then we get into the purpose of education, which is "to provide students with the opportunity to realize their potential and develop into highly skilled, knowledgeable, caring citizens who contribute to their society."

As a principle, I think this is wonderful. I think that most reasonable people in our province would agree with this principle. I'd respectfully submit to you, though, that the definition of the purpose of education is frankly subjective to the individual. There are some people in Ontario who may believe that the purpose of education is to seek personal fulfillment and happiness. There might be one senior citizen in Ontario who is not looking to pick up new skills but in fact wants to explore a subject that he or she has never explored before and wants to better themselves. So this is not a serious area of concern for me. The principle is beautiful, and I think it makes a lot of sense to most reasonable people, but I would submit to you that when we put language into legislation that is supposed to be there for us all, that we do take into consideration the fact that there's a diversity of opinion about definitions such as "for education," which is important to every single one of the people of Ontario.

I'd like to turn now to conduct of members of school boards, on page 6. This is in section 218.1, and I'd like to go specifically to item (d) which reads, "A member of a board shall support the implementation of any board resolution after it is passed by the board." Now, as you can see, I am here in my capacity as the trustee for the community which I have served for six years. Sometimes my community may have a different opinion than another community; sometimes, I, as an elected official, may have a different opinion than my colleagues might have.

I'll give you one example: The matter of the Africentric school in the past year was an incredibly divisive, controversial and important matter that we discussed. I believe that in the boardroom, it was a very respectful debate. I actually think it was probably one of the most thoughtful, passionate but genuine debates we've had in many years, because we all care about our marginalized students. But I can't, in good faith and in good conscience, support a resolution that I don't. I can't pretend to go to my constituents and say that I do. Now I would never deliberately obstruct the implementation of a resolution, but certainly I can't, in good conscience, support it.

I wonder if this follows the intent of our charter. I wonder if this might be reworded in a way that might be able to still represent the intent of this item, and I recognize that the intent is to have an orderly, functional board, but I would submit to you, with all due respect, that we need to realize that we do have elected trustees, and that being so, we should have the opportunity to voice the priorities, the needs and the views of our

constituents in good faith and in full honesty, and not pretend to believe in something or support something that we don't.

Perhaps you could consider, as a committee, to reword this in a way that follows the intent but allows us the freedom of independence, because, frankly, as you know well, we don't have a party system and we do understand that we have allowance to speak as independent voices rather than have any sort of cohesive, caucus type of decision-making process.

Another question I would ask for your consideration: I understand it to be true that a board in this province cannot pass a resolution that would pass a deficit budget. It is actually, in fact, against the Education Act, which this bill intends to amend, to pass a deficit budget. Now, the TDSB, in the past, has passed a deficit budget, as you all know. If my board decided to pass a deficit budget, according to this amendment, I would have to support breaking the very law that this bill intends to amend. I believe that this specific item, actually, is contradictory to the very bill that it seeks to amend, and I would ask you, respectfully, to reconsider the wording to allow trustees the independence that you have publicly said that you would like to allow us and also ensure that we are not forced to break the very law that this bill intends to amend.

Lastly, as part of the code of conduct matter, I commend this government for bringing this bill forward to update the Education Act, to promote student achievement and board governance and accountability. I think that we need to do a better job at every board all the time, and as thoughtful people, we always try to do a better job.

However, I believe that the process we have now—this has been the experience of some of us who have been subject to some of the current codes of conduct that we have at our board—that it would be a utopian world if every trustee could be fair and objective with each other. The reality at our boards—many of you have been trustees; Liz and Rosario as well—and you know that some of us are politically partisan, some of us have ideologies that might be different than others, and some of us may have had personality clashes. I know this never happens at Queen's Park, but it does happen at some of our school boards.

What I'd like to submit to you is that it would be nice to believe that all of the trustees would be able to fairly judge and try and prosecute their colleagues, but it may not happen all the time. In fact, I think that the very fact we rely on each other for votes and sometimes argue against each other when we're stopping an initiative that we disagree with, or when we're attempting to do so—allowing a board to have its own code of conduct and then try a trustee once a complaint has been brought forward to the board, by its very nature, creates a reasonable apprehension of bias. There is no way that a reasonable person could possibly believe, if they know how school boards operate, at least in Toronto, that we are going to be completely fair and objective with each other.

Therefore, I would suggest that your committee consider the possibility of amending this to have an external body consider complaints. I think it is absolutely just and vital that complaints go somewhere, because we are imperfect. But I do believe that it should go to a fair and objective—whether it be an individual, some type of integrity commissioner office, or perhaps a quasi-judicial body that can be responsible for all 72 publicly funded school boards across Ontario.

1530

To conclude, I believe that, from being a trustee for the past six years, my experience has shown me that the TDSB, along with school boards across Ontario, is in the midst of an evolutionary process. Obviously, we're no longer what we were before 1998 when we were able to levy local taxes to provide towards local priorities. We, I very much hope, are not where we will be one day; in other words, I hope our evolutionary process will continue towards a structure and a governance model that fully functions for the parents, the students and the residents of Toronto and across Ontario.

However, I do believe that this bill, in large, is a positive contribution towards that goal. I do believe that there are variances that are incredibly important to ensure that this bill gets it right. I want this bill to be the best bill it can be, but ultimately, I hope that this government will give further consideration past this bill to what is the best model for school boards in Ontario. If we don't levy local taxes, then how can we be directly accountable?

To be candid, when Mr. Harris was our Premier, he put the TDSB under supervision in a very quick and hasty way—

The Chair (Mr. Shafiq Qaadri): I need to intervene there, Mr. Matlow. Thank you, on behalf of the committee, for your deputation in your various capacities as trustee.

BERNADETTE SECCO

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter to please come forward, Ms. Bernadette Secco. Benvenuta.

Interjection.

The Chair (Mr. Shafiq Qaadri): The member calls for an extra 10 minutes because you're from Niagara Falls. I don't think I have unanimous support for that, but please go ahead.

Ms. Bernadette Secco: Thank you very much. My name is Bernadette Secco, and I am a resident of Niagara Falls. Other than as a student, I have been involved in the Ontario education system for almost 18 years. I'm neither a teacher nor an administrator, and my comments today represent my own opinions and not those of any other group or persons.

Thank you for the opportunity to address the standing committee regarding Bill 177. My focus is governance. Realizing the need for change is the first step; the challenge for the ministry is where to begin and then how to do it.

While defining the roles and responsibilities of school board members, the director of education and chairs, the provisions of Bill 177, in my opinion, undermine the expectations of responsibility placed in the trustees by the electorate. Trustees lose the right to advocate. This is unthinkable under the Municipal Act or the standing orders of Parliament. How many MPPs here today would want to be sanctioned?

It is the very role of the trustee to engage the other board members and staff in discussions and actions that address the needs of the province, parents, children and constituents. The effect of the restrictions of Bill 177 will be to marginalize students.

As it is, a trustee cannot simply ask staff for a copy of a grant application or a past budget. They have to do it as a motion in an open council requesting it, and they need majority approval. Should the superintendent fail to provide that copy, there's not much that the trustee can do. That's today.

If the ministry is truly looking to define the roles of the administration and to bring consistency across the province in governance, then a critical examination of the loopholes in the Education Act is required. The act is filled with what boards and their administration may do, rather than what they shall, will and are required to do. This is a fundamental flaw. Without clear definitions of roles, responsibilities and consequences, there cannot be consistent governance and decision-making.

There are so many similarities, actually, between municipalities and school boards that serious consideration should be given to adapting the Municipal Act for school boards. The Municipal Act could be the blueprint for establishing the definitions of roles and responsibilities and the jurisdiction of school boards. It would define the relationship between municipalities and school boards and between school boards and the province. It would outline the standards for delivery of education, how to measure the results and address the shortfalls, budgeting and fiscal responsibility, along with clearly defined processes for appealing a board decision. Most importantly, it would establish that board decisions must be based on legislation.

Both municipalities and school boards are granted power by the province. Both have heads of administration, heads of the board, democratically elected representatives, administrative heads and lobbying groups. They also share the same major stakeholder, the taxpayer.

Taxpayers will have rights to representation, input and appeals under the Municipal Act and be denied those very same rights to representation under the proposals of Bill 177. To me, this is like having the provincial laws governing one part of my life and sharia law governing another. I don't want that.

In Niagara-on-the-Lake, the school board wishes to have a parcel of land rezoned institutional, something council has voted against. Consequently, the school board is taking the municipality to the OMB to argue that decision. However, the same school board has decided to

close the only high school in the community. The municipality can appeal the process but not the decision. It pits taxpayer money against taxpayer money, increases frustration, and it is quite challenging to have meaningful discussions when the rights, responsibilities, obligations and judicial review or appeals are so unbalanced.

The ministry's newest draft encouraging facility partnership continues this disparity. It encourages school boards to work with municipalities, but there's no requirement for them to do this. This sets a climate for lip service rather than meaningful dialogue or cooperation.

The importance of third party oversight of school boards cannot be emphasized enough. The ministry and boards may not like it, but with declining enrolment, increases in budgets and school closings, the oligarchy of school boards must be re-examined.

I believe a rewrite of the Education Act will be much more effective in reaching the ministry's goal of improving board governance than the policies flowing from Bill 177.

Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you very much. About a minute and a half or perhaps more per side. Ms. Jones.

Ms. Sylvia Jones: I'm not sure how long you've been sitting and hearing the deputations, but there have been a number that have raised the expansion of the Ombudsman in that third party oversight role. If you have an opinion on that, can you share it with the committee?

Ms. Bernadette Secco: I have no opinion as to who that third party oversight should be, but it should be someone who has the power to change, that we can go comfortably and say, "There's a problem with the decision"—maybe judicial, but that's very expensive and time-consuming.

Ms. Sylvia Jones: Thank you.

The Chair (Mr. Shafiq Qaadri): Mr. Marchese.

Mr. Rosario Marchese: Bernadette, I appreciate what you're saying. There are times when boards make decisions, at least if they have the power to be able to make some decisions because there's so very little power left, given that they have so very little financial discretion any more—they have to make those decisions. Presumably, in that democratic process, if we don't like them, we just unelect some of those trustees. How else—otherwise, we would have to have a direct channel to the minister in terms of the minister having to decide everything. Is that maybe what we want so we can get directly to the minister to be able to deal with an issue?

1540

Ms. Bernadette Secco: If I have a problem with a decision you make in the House, I know that I have a process to follow so that I can question your decision. At the school board, I cannot question the decision. I don't believe that school boards should be allowed to make decisions omnipotently without any kind of responsibility, accountability or transparency. They can make the decision; I should be allowed to question it and appeal it without having to wait for the next election. I'm

finding that too many trustees are saying, "Well, you can vote us out." If you look at the number of voters for boards of education—we're bored with them. We know that we can't make any difference.

Mr. Rosario Marchese: So you have no process at the board where you can actually depute and say, "I disagree with that"?

Ms. Bernadette Secco: Correct.

Mr. Rosario Marchese: There's no process at all?

Ms. Bernadette Secco: Correct. I can only appeal the process; I cannot appeal the decision.

The Chair (Mr. Shafiq Qaadri): Mr. Craitor.

Mr. Kim Craitor: Bernadette, thanks for taking the time to come up here. It's a pleasure to see you in my neck of the woods. I know why you're up here, and I really appreciated your comments.

Very quickly, I know one of the things that has been a real concern in Niagara-on-the-Lake, which I represent, is the fact that the board there has made the decision to close the only high school in Niagara-on-the-Lake, and I know the frustrations you've had in trying to deal with the board. For the committee, because they may not be aware of it, can you just quickly share the frustrations you've had in dealing with the board and what they're doing with the only high school in Niagara-on-the-Lake?

Ms. Bernadette Secco: Under the process of the ARC review, the community and the municipality followed all the rules. When it came to the decision-making, the board dismissed the guidelines in the ARC, a major guideline of which is that you don't close down the only high school in a town. They can dismiss that because it was merely a guideline; it was not a requirement to keep it open. It was not a "must" or a "shall." The municipality has been fighting very hard to try and get the board to understand the importance of this. The community has spent over \$100,000 of our personal funds to try to get the board to understand this. We've developed programming. We have started athletics. We have done all sorts of things, and the board can simply dismiss everything we've done because it is simply a guideline, and they can bus the students for 40 minutes.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Craitor, and thanks to you, Ms. Secco, on behalf of the committee, for your deputation and presence here.

SHANNON PORCELLINI

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter, trustee Ms. Porcellini of ward 3 in Windsor. Welcome.

Ms. Shannon Porcellini: I have an extra copy, Mr. Koch.

The Chair (Mr. Shafiq Qaadri): Sure. Thank you, and please begin.

Ms. Shannon Porcellini: Thank you. My name is Shannon Porcellini. I'm a trustee with the Windsor-Essex Catholic District School Board. I represent ward 3 in the city of Windsor, which contains a number of dense urban neighbourhoods, the casino and the downtown core. I'm

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here representing my constituents. I am not speaking on behalf of the board.

I'm here to talk about three issues with regard to the proposed legislation which are of concern to my constituents. First, an education system should provide and measure more than just a student's achievement on standardized tests. Second, the provision of funds should be addressed in the legislation. Third, the provisions for the code of conduct for trustees and division of responsibilities should be addressed by board bylaws and policies and developed at the local level in response to local needs and culture.

The preamble itself states that, "The purpose of education is to provide students with the opportunity to realize their potential and develop into highly skilled, knowledgeable, caring citizens who contribute to their society."

Measuring, enhancing and closing gaps in student achievement does not build responsible, well-rounded citizens. Measuring, enhancing and closing gaps in student achievement builds an industry to support testing. That's all.

In my community, there are three schools that are underperforming on EQAO and OSSLT. The details of these schools are included in my written submission. The underperformance of these schools does not mean that the children there are illiterate or will not become productive citizens. These schools provide more than just test results, and the tests do not necessarily resonate with the students and their families, particularly in my core city communities,

If we go down this path of student achievement measured through student outcomes being the primary purpose for education in Ontario, then where do these students fit? Right now, schools are safe places for at-risk students. The schools provide intramurals, arts experiences, back-on-track rooms etc., and for years we've been telling parents that EQAO was just a snapshot of a school and wasn't meant to pigeonhole their children. Bill 177, if passed as is, would make that a lie, because it will entrench in legislation two streams: high-achieving students in schools and those who don't measure up.

OFIP and other focused interventions, while admirable and even necessary, are not viewed by the community or by administrations as positive interventions. I've observed that achieving OFIP is viewed as a cause for concern by administrators. School effectiveness frameworks and school improvement plans are linked to EQAO results and are part of principals' annual performance plans. Why would a principal want to transfer to an OFIP or low-achieving school when their opportunities for advancement may be damaged by the school's low performance?

Dollar for dollar, there's a better return for taxpayer money on smaller class sizes, increased supports, increased resources and revitalized spaces than on building a bureaucracy based on testing.

The ministry requires that school boards utilize all their excess capacity, meaning empty classrooms, before they will fund additions, renovations or new construction. Inner-city schools, like those in my community, in areas of residential decline or transition have excess capacity. That leads to amalgamation or closures and less opportunity for learning, not more.

Schools in my community face low test scores, OFIP and excess space. This is an enormous amount of pressure on students and parents. It does not create situations conducive to learning for at-risk students.

If the ministry is going to entrench student achievement as a purpose for school boards, then the ministry should be obligated to provide funding and interventions at an adequate level as determined not by the ministry but by the community itself.

Parent councils, community members, staff and administrators all expect to be able to contact their trustees about education-related issues. Trustees need to be able to deal with supervisory staff, principals, superintendents and the director without interference. If a senior is concerned about pea stone migrating from the play structure onto the municipal sidewalk and contacts me about it, I shouldn't have to call the director and have the message transferred down the chain of command. That pea stone won't be swept until spring, if the message even gets to the principal intact.

I know of no trustees who do not see themselves as community activists. The code of conduct provisions should be locally relevant and administered through board bylaw and policy. For example, if the board votes to close one of the schools in my neighbourhood, under the new legislation I would be obligated to support the resolution after it passed. But what does "support" mean? Does it mean I would not be permitted to speak against it to my constituents? Does it mean that I would not be able to discuss my opposition to the resolution with the media?

We are all dissidents, every trustee. Please don't muzzle us. Trustees are the most accessible of all four levels of government. We need the capacity to relate to and represent our neighbours.

A summary of the changes to specific sections that I would request be considered is included in my submission.

The purpose of the education system in Ontario is more complex than just higher student achievement. Not including socialization or soft-skills development does a disservice to those students who, for whatever reason, cannot perform well on standardized tests.

High achievement levels and closing the gaps in achievement create a two-tiered system across the province: schools that do well and students who do well; and everybody else.

Special needs, IEPs, behavioural issues—there are a myriad of reasons why some children don't perform at or above ministry guidelines. If student achievement needs to be there, then build all of these factors into student achievement, high and low. Don't relegate kids who don't perform, or schools with low results, to the ghetto of closing gaps in student achievement. It's semantics, but it will make a difference.

If student achievement is mandated by regulation at a particular level or benchmark, then the ministry must be obligated to provide funding to support that achievement. It's simple: Show me the money. Don't just identify the gap and require me, as a trustee, to scrape together the resources, under threat of a supervisor.

The code of conduct and separation of duties should be a matter for boards to shape as fits their communities, through policy and bylaw development, not through legislation.

Thank you for your time, and I'd be happy to answer any questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Porcellini. About a minute or so per side, starting with Mr. Marchese.

Mr. Rosario Marchese: Just a couple of things. To your point: "Support the implementation of any board resolution"—it's exactly what it means. There is no dissent. It's very clear.

Ms. Shannon Porcellini: And that's not fair.

Mr. Rosario Marchese: We absolutely—I find it objectionable, and most trustees are speaking against it. So it's good to see you say that as well.

From the report on school board governance, on the whole issue of academic achievement—to the purpose with respect to student achievement and well-being, closing the gaps. If you don't close the gap—from the report on school board governance, it says, "If a board fails to comply with the continuum of measures, and if there is no improvement or a continued pattern of decline in student achievement, then the minister may appoint a supervisor for that board, as set out in legislation."

We think they mean to do this. It's not in the bill, but we think they mean to do that. It's objectionable.

Ms. Shannon Porcellini: I think it was actually introduced by a previous minister and incorporated into the Education Act prior to Bill 177—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese.

Mr. Rosario Marchese: You find it objectionable.

Ms. Shannon Porcellini: Very.

The Chair (Mr. Shafiq Qaadri): Ms. Sandals.

Mrs. Liz Sandals: Thank you very much. Welcome. I'm going to ask you a question that reflects back to what Mr. Matlow had to say—I think you were here—because you've raised the issue of this word "support." He gave an example of the Africentric school, which he had—and you can think—

Ms. Shannon Porcellini: I was there for his—yes.

Mrs. Liz Sandals: Okay, so you can think of a similar situation in your own board—

Ms. Shannon Porcellini: Oh, absolutely.

Mrs. Liz Sandals: —I just happen to know that one. If that was the situation in your board and a constituent came to you and said, "I know you disagreed with this policy, but I'd like to know how to participate," would you be agreeable that it's your job to give your constituent the information about how to participate in the implementation?

Ms. Shannon Porcellini: Absolutely, Ms. Sandals, and actually, that's part of our board policy and our policy governance process. That was developed in conjunction with the community and with community input. In fact, all of our policies go through that.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms.

Sandals. To Ms. Jones.

Ms. Sylvia Jones: Shannon, I don't have a specific question, but it was an excellent presentation. Thank you for highlighting the importance of the role.

Ms. Shannon Porcellini: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones, and thanks to you, Ms. Porcellini, for your deputation.

JOSEPH W. CROWLEY BUS LINES LIMITED

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter, David Crowley of Joseph Crowley Bus Lines Ltd. Welcome, and we'll have that distributed for you. I invite you to please begin now.

Mr. David Crowley: Great. Thank you very much for having this forum this afternoon. I've been here for a

couple of hours, and I find it very interesting.

I am here today on my own nickel. I paid for my own tank of gas up and my own parking outside. I represent a small school bus operation that my father and I have owned for over 30 years, Crowley Bus Lines Ltd. in Norwood, Ontario, just east of Peterborough. We are the fraternity of the people who help get the kids to school so you people can help them, teach them and educate them. We're also the people who get them safely home at night.

My problem here today, or the issue that I have with you folks today, is governance and the governance bill—school board governance. We have a consortium in Peterborough county—I'll try and quickly explain it. Student Transportation Services of Central Ontario is the administrative arm that administrates school bus services for Peterborough and the surrounding regions. Our cheque is signed through the school board, the Peterborough Victoria Northumberland and Clarington Catholic District School Board and also the Pine Ridge Catholic school board. They sign the cheques, we spend the money as operators in our community, and STSCO administers the school bus operations.

The problem that we have, as a company, is that we have had a conflict with the Student Transportation Services of Central Ontario over the past year on the management and operations of our routes and financials. We have tried to mediate with them, to no avail, and we've asked for a governance meeting with the governance committee that has been set up. If I can show you through my handout, on the back page, the governance committee of STSCO is comprised of the board chairs, the directors of the boards and the business superintendents.

This meeting took place on October 1 of this year, the first Thursday of the month, and six people were present

from the three boards. They're listed on my handout: Christine Dunn, chairman of the Peterborough Victoria Northumberland and Clarington Catholic District School Board; John Mackle, the director of education; and Isabel Grace, superintendent of business and finance; and representing the Kawartha Pine Ridge District School Board, Angela Lloyd, chairperson; Rusty Hick, director of education; and John R. Lawrence, superintendent of business and corporate services. There was also one other representative, the director of the French Catholic board, but I failed to remember his name.

What bothers us is that in trying to get a resolution of the contractual issues between Joseph W. Crowley Bus Lines Ltd. and STSCO, we were asked to discuss it with the governance committee. The main concern of this meeting was that STSCO's CAO, Joel Sloggett, acted as secretary, recorded the minutes and influenced the discussion of the issues after our delegation left the meeting.

We are also very concerned that all other members of the committee—seven respected members in our community; directors of education, chairs and superintendents of business—allowed this to happen. We believe that this is a blatant conflict of interest and a blatant conflict of proper governance.

Independent school bus operators in our region are absent any legitimate avenue, with school boards they serve, to resolve disputes with the administrative leg, Student Transportation Services of Central Ontario. This has really bothered me—really bothered me.

It's just by fate that I was reading the Toronto Star one morning and saw the ad for Bill 177, so I thought I would come here and present my concerns.

I have looked over the bill. I guess, over the past two hours I have been sitting in this room and in the next room, there has been a continual theme of needing third party oversight of the school boards. That's what I believe we need. I've heard about extension of the Ombudsman, the Auditor General and the Integrity Commissioner.

It upsets me that seven well-educated people would allow an administrator of a company we have a dispute with to act as secretary and minute-holder of the meeting.

Some other possible solutions, I believe, are proper governance protocol education of all senior board administrators and board members.

If the STSCO model is the student transportation model for the province of Ontario, I would like to see third party oversight of this administration, STSCO, to solve disputes as a liaison between operators and the school boards they serve. We have no credible source, as school bus operators who drive the road every day, to connect in a meaningful way with the person who signs our cheques.

I would also ask that the Ministry of Education immediately institute an independent review of the administrative management of STSCO by the school bus drivers. The school bus drivers, the ladies and gentlemen who start the bus every morning, warm it up, kick the tires and check the lights, have never been asked how

they think the system is going. It has been in existence for five years, and I believe it's time that the people who are doing the work and living with the results of the administration are asked how they think things are going. This has yet to happen.

I guess I'm here today to ask the committee: Who do I, as a school bus operator, talk to if I have a problem? Who do I talk to in Queen's Park to get an answer?

My father and I went through the protocols and, to our great frustration, we have no answers. If the committee could tell me or point me in the right direction of whom I can talk to, whether it is in the ministry or the Auditor General or the Ombudsman or the Integrity Commissioner, I would love to know.

Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Crowley. A minute per side. The government: Ms. Sandals.

1600

Mrs. Liz Sandals: I'm just trying to figure out—you've accused the consortium of a conflict of interest, and I don't quite follow. I just want to make sure I understand. You appeared before a committee that included chairs, directors and superintendents of business and finance for two boards, plus I think I heard you say the director of a third.

Mr. David Crowley: Yes.

Mrs. Liz Sandals: Those would be the people whose money is ultimately being flowed. So I don't understand why this is a conflict of interest.

Mr. David Crowley: We think it is inappropriate that the CAO—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals. Ms. Witmer.

Mrs. Elizabeth Witmer: Thank you very much. I appreciate your presentation. I'm not sure this is the forum where the question you have can be answered. I certainly share your concerns.

There seems to be nowhere to go for a resolution of some issues. We heard from a parent today who is concerned about the fact that our students aren't safe in schools. I think it's up to the government. Hopefully they're listening, and hopefully they'll provide some response for you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Witmer. Mr. Marchese.

Mr. Rosario Marchese: David, who is your local MPP?

Mr. David Crowley: Jeff Leal. I'm in contact with Jeff Leal. Like I said, this happened fast. We got the letter back from the—

Mr. Rosario Marchese: What did he recommend?

Mr. David Crowley: I talked to him at 2 o'clock today to say I was coming to the committee. He said maybe the Auditor General, maybe he would contact the chairs—

Mr. Rosario Marchese: Ask him to write a letter for you.

Mr. David Crowley: I think it's a blatant conflict that the person you have a concern with is the person taking the minutes and the secretary of the meeting.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese, and thanks to you, Mr. Crowley, for your deputation and written materials.

ROB DAVIS

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter, Mr. Rob Davis, a trustee. Welcome, Trustee Davis. I invite you to please begin.

Mr. Rob Davis: Thank you, Mr. Chairman. I think I have provided each member with copies of two documents. One is a decision with reasons rendered by Justice Kelly. Another is a very extensive legal opinion that was secured by the Windsor-Essex Catholic District School Board, with some comments about the decision.

As most of you may know, I have not been a trustee very long. In fact, I was appointed to replace a trustee who was removed on May 8, 2008, which was the day after the Hartmann report on trustee expenses at Toronto Catholic. My 17 and one half months on the board would be best described by that old Chinese proverb about a blessing and a curse. They have definitely been interesting. I say they have been a blessing, because I have been witness to some of the greatest acts of kindness, generosity, professionalism and sense of community on the part of teachers, staff, trustees and the greater community, but they have been a curse because I have also had a front-row seat to witness everything that can go wrong on a school board in the province of Ontario.

Please don't take any of my comments as being exhaustive, by any stretch of the imagination, in terms of Bill 177; rather, my comments sort of zero in on a few things that I think are important and are lacking in the bill or that perhaps were not considered when the bill was drafted.

I have a couple of recommendations. I'll rhyme them off and then explain them as I continue my remarks.

(1) If you read through the decision by Justice Kelly and read the legal opinion from Windsor-Essex, you come to the conclusion that my number one recommendation should be adopted: Trustees with relatives on staff should be prohibited from being the chair or vice-chair of a board. It's simple. It's plain as day when you actually read the decision and the opinion.

(2) The province should create an office of integrity commissioner so that breaches of conduct can be heard in a quasi-judicial framework, allowing for the rules of evidence etc., and so that the rules of natural justice can apply, but also so that members of the public can pursue a remedy, should they wish, when there's an issue of integrity.

(3) You should make it mandatory for the director of education to report potential breaches of the conflict of interest act and compel the director to prosecute through the integrity commissioner's office. You need to create a province-wide code of conduct in consultation with

boards. We have a common curriculum. There's certainly nothing wrong with having a common code of conduct so that, no matter where you are, no matter where you live, you're sure about what the trustees are supposed to do.

(4) You should allow electors as well to launch complaints to the integrity commissioner. Under the current recommendation vis-à-vis the code of conduct, there is no opportunity for electors to pursue remedy if they think their trustees have done something wrong. You need to allow trustees and electors to launch complaints even when a board is under provincial supervision, such as we are. Section 219.3.1 is not explicit in terms of allowing that to happen because it's not just the things that you do in operating as a corporate board, but there are some day-to-day things that you do as a trustee that might force you or put you in a position where you violate the code.

One of my last points is that (5) you should create a whistle-blower exemption to section 218.1(d) when a board takes an action that's contrary to the act or any other act. I think Trustee Josh Matlow spoke to that. Bill 177, as it's written, in essence compels a trustee to abide by an illegal act while at the same time compelling the director of education to report that violation. It's a little bit of a subtle but important nuance in terms of what you should do.

At our board, at my very first meeting, I was witness to what I considered to be a breach of the Municipal Conflict of Interest Act by no fewer than three trustees. The matter in question resulted in a \$14-million deficit, which put our board under ministerial supervision. Prior to the vote, during the meeting, I stood up on a point of order-it was my very first meeting-I raised the concern and, notwithstanding my point of order, the three trustees continued to participate in a budget debate and vote which resulted in the \$14-million loss. But in the audience and in front of no fewer than the chair of the board, the chair of the committee, the director of education and ministry staff, who were sent there to monitor the activities of our board because of some of the controversies, not one of them by law was compelled to do anything-to report it, to prosecute, to alert the minister so that there is some action taken. But the taxpayers are out \$14 million.

Now, one of those trustees has been subsequently removed by judicial order and, as I mentioned, I provided each of you with a copy of that decision. The decision is very revealing because, as I said, trustees who have a parent, a spouse or a child working at their respective boards can't possibly act as a chair or vice-chair without putting themselves and their board at risk. I think it's quite explicit. It's a little bit disturbing that the decision was rendered eight and a half months ago, yet the act and the significant changes to the act don't reflect the reality that exists in case law. I think it's something you really seriously have to consider. If we know that you can't act as a chair or a vice-chair and it's going to put you at risk and it's going to put your board at risk, then simply prohibit that from happening.

I applaud the fact that there is a request or a movement towards a code of conduct. As I mentioned, it should be common throughout the province. The current framework, I think, could provide for two rather extreme outcomes that are unintended consequences. Firstly, trustees will be loath to single out a fellow trustee who has breached the code of conduct. In a political environment where trustees rely on each other for votes and to support policy initiatives that they want to advance, it's an unlikely prospect that a trustee will complain, and if he or she does, it's unlikely that the complaint will come to a successful conclusion. Worse yet, the act envisions trustees voting on financial penalties and removal from committees. Ladies and gentlemen, this is an enforcement provision that would let Tony Soprano get away with murder if he were a trustee.

Alternatively, the provisions also create an opportunity for the tyranny of the majority to flourish where there may be an unhealthy or a poisoned environment among trustees—and such is the environment that I was sort of dropped into or parachuted into some 17 and a half months ago.

In cases of a more serious breach and ones that rise to the level of conflict of interest. I believe that the director of education should be compelled, as I mentioned, to provide the integrity commissioner for trustees with the evidence necessary for the integrity commissioner to make application to the courts to remove the trustee in violation. Our school board is currently under the care and supervision of the Ministry of Education supervisor, and as such, the proposed code of conduct clause would be rendered ineffectual as a trustee would really be unable to launch a complaint for consideration because trustees can't call board meetings. So trustees actually don't have the right the vote, they don't have the right to call a meeting, and therefore, if that board was under supervision for an extended period of time, the breach would simply sit in limbo until such time as the trustees were no longer under supervision, or the board was no longer under supervision. Again, I think it leaves trustees dangling in the wind and it prevents citizens—the electors, the people we serve, the parents and the studentsthe opportunity to seek a remedy.

Finally, section 218.1 does not provide protection for a so-called whistle-blower. As an example, many years ago Toronto Catholic trustees voted to provide themselves with health benefits they were explicitly prevented from having. In a worst-case scenario, trustees who held a minority opinion, who could blow the whistle on this practice, could in fact be reprimanded, have their remuneration reduced as punishment, or have themselves removed from committees for alerting the public and the ministry officials of this impropriety.

These are just a few points that I wanted to make known to the committee as it deliberates on the bill, and I'm open to answer any and all of your questions.

The Chair (Mr. Shafiq Qaadri): Just a few seconds per side, beginning with Ms. Jones.

Ms. Sylvia Jones: I don't have any questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones, Mr. Marchese?

Mr. Rosario Marchese: Rob, thanks so much. I wish you'd left a couple of more minutes. None of the suggestions you made are part of what this bill is all about.

Mr. Rob Davis: That's the problem.

Mr. Rosario Marchese: That's not just the problem. This bill is about something else. You would think that, given the nature of governance, somehow we would have your issues that you've raised addressed. So I'm puzzled by this bill, I'm offended by the conduct of member school boards, as it is written—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. Ms. Sandals?

Mr. Rosario Marchese: Are you offended by that? Mr. Rob Davis: Yes. I am.

Mrs. Liz Sandals: Just to make a comment, clearly this bill does not amend the Municipal Conflict of Interest Act, nor is it the intent of the bill to amend the Municipal Conflict of Interest Act—

Mr. Rob Davis: No, but the bill does compel the director to do certain things when certain things happen. What I'm arguing is that in this act, you could compel the director to report a violation of the Municipal Conflict of Interest Act—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals, and thank you, Trustee Davis, for your deputation.

GEORGE PASICH

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter, Mr. George Pasich, to please come forward. Welcome, and please begin.

Mr. George Pasich: Thank you. My name is George Pasich. I've been involved over the last four years in fighting for the rights of my son, who is illegally excluded and illegally expelled. During the last four years, I've contacted the Ministry of Education, the Ombudsman, the Premier of Ontario, a number of people, and I've gotten nowhere. This is my second presentation; I presented at Bill 212, and that was an eye-opener. Once everybody has this, I'll start.

Bill 177: an oxymoron, deceit or outright lies? Under the Education Act, section 58.5, school boards are granted statutory corporate status. They are not accountable to anyone except under special circumstances, as spelled out in legislation. In reality, they are on their own. If they choose not to obey the Education Act, a parent can take them to court, but this is not feasible in most cases. The Ministry of Education is well aware of this flaw. In fact, they use this flaw to avoid dealing with any serious complaints. At the same time, they have declared that there is no formal complaint system to deal with school boards. The case number that I have must be an illusion.

This situation worked so well the last few years that another government body, the Ontario Human Rights Commission, was forced to step in. Eventually settlements with the TDSB and the Ministry of Education were reached. Although disobeying a statute is a Criminal Code offence, section 126, somehow this prosecution has not happened. Instead, Bill 212 was the result of a settlement with the Ministry of Education.

However, a Toronto Star article in June 2009 indicated that problems still exist, especially the denial of education. Specifically, the Minister of Education was not aware of the fact that exclusions were on the rise, and she felt this was unacceptable. Apparently she was not at an education law event where a Liberal MPP stated that the exclusion clause was "education's dirty little secret."

During the passing of Bill 212, amendments to fix the exclusion clause were defeated and an amendment to make school boards accountable to the Ombudsman was also defeated. Even more distasteful was the fact that timelines to have an appeal resulting from a suspension were purposely extended to prevent the appeal from happening before the suspension ended. That wasn't the same MPP involved, was it?

It is my belief that the Criminal Code has been breached and continues to be breached with explicit knowledge of the Ministry of Education. Excluded students are routinely denied their right to an appeal. Of course, one cannot expect the Ministry of the Attorney General to look at this and deficiencies in legislation, because this actually falls under their jurisdiction.

The reason why school boards must be held accountable specifically in the area of safe school legislation is because the boards are using forced transfers and other illegal actions to deny education. Forced transfers lead to an increased probability that a student drops out. These dropouts pose significant consequences to society. The TDSB's dropout rate has been hovering around 25% for the past few years, unchanged.

Miraculously, the public has been saturated with news of continuous improvement in the areas of literacy and math. The grade 9 EQAO math results show a stunning 60% provincial fail rate in applied math. The TDSB fail rate is 73% for applied math students. Applied math students represent one third of all students. The Ministry of Education should get out of its illegal justice act, denying legal and due process, and focus on providing education to all students as is the mandate.

In summary, if you really want accountability for the school boards, make them accountable to someone independent of the education system. Even your Mr. Crowley suggested that. Student achievement is the responsibility of the Ministry of Education. Quit trying to pass the buck.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Pasich. About a minute and a half per side, beginning with Mr. Marchese.

Mr. Rosario Marchese: George, thank you. I'm not sure that this bill was intended to address your issue, or could, but there are often failures in the school system. Sometimes we fail many of our students.

It is true that many reports have been done about students who have been expelled or suspended, and a disproportionate number of them have a disability of sorts and/or are children of colour. We've never dealt with that very well. I really do believe that a bill that I introduced a couple years ago, which would force the Ombudsman to have oversight of complaints, would be the vehicle to help people like you, because the current Ombudsman has a great deal of power to be able to get to an issue, make recommendations and make governments accountable. I don't think anything else would do that.

Mr. George Pasich: And who denied that in Bill 212? Mr. Rosario Marchese: Well, my bill never had any support from the government, so it's a bit of a—

Mr. George Pasich: What about Bill 212? You don't remember the amendment?

Mr. Rosario Marchese: Which was again?
Mr. George Pasich: To have the Ombudsman.

Mr. Rosario Marchese: Ah, gotcha.

But I thank you for coming, George, and I know it's difficult. Sometimes the answers are not easy to come by.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. To Ms. Sandals.

Mrs. Liz Sandals: Well, I guess I'll just comment that this act, Bill 177, does not deal with the same subject matter as Bill 212. For the record, Bill 212 did amend the exclusion law, the law and regulations around exclusion, and if a student is excluded from a school, the parent does have a right of appeal.

Mr. George Pasich: And when that parent does get the right, what happens?

Mrs. Liz Sandals: Well, there is a right of appeal.

Mr. George Pasich: And when that right of appeal is not given, then what happens? Should somebody be charged, or is there a right of complaint?

Mrs. Liz Sandals: I don't know the circumstances of the individual case—

Mr. George Pasich: Well, that's because you won't talk to me. You've been avoiding me for two years.

Mrs. Liz Sandals: —but I did want to correct the legislative record.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals. Ms. Witmer.

Mrs. Elizabeth Witmer: Well, thank you very much, Mr. Pasich, for coming here today. It appears that many people are appearing before us today not really to speak to Bill 177, but because they have concerns with the education system and see nowhere else to turn, so they've used this as a forum. I'm sorry that you haven't been able to find any resolution for the problems.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Witmer, and thanks to you, Mr. Pasich, for your deputation and presence today.

EDUCATION ACTION: TORONTO

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter to please come forward, Mr. Paul Dudley of Education Action: Toronto.

Welcome, Mr. Dudley, and please—

Mr. Dudley Paul: I'll just correct the record, please. It's the other way around. Dudley Paul. Pardon me.

The Chair (Mr. Shafiq Qaadri): Oh, sorry. Dudley Paul. Mr. Paul?

Mr. Dudley Paul: First of all, I represent Education Action: Toronto, which is a community-based organization working with educational workers and parents across the city to try to enable them to gain greater access, understanding and a voice in education across the city. I should also just mention, for the record, that I'm a retired principal. So I suppose that must give me some credibility, perhaps, when we're talking about a bill which so demonstrably takes away from trustees' powers, that a former principal might be here to defend them somehow.

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In a nutshell, Education Action: Toronto doesn't see how this bill is actually going to improve school achievement, as it says in its title, Bill 177, Student Achievement and School Board Governance Act. Somehow these two terms seem to collide rather than help one another out.

At first glance, Bill 177 appears to be a solution looking for a problem. It begs several questions: Is there widespread abuse of power among school trustees throughout the province? Do they not attend meetings? Are school boards so much more raucous, perhaps, say, than the provincial Legislature that, for example, trustees need to be reined in by the only means possible—a provincially mandated code of conduct? Are trustees generally incompetent, say, compared to provincial MPPs? These appear to be the problems for which Bill 177 looks for a solution.

Unfortunately, the bill is more ominous than it appears. It's fundamentally a bill whose purpose it is, I believe, to restrict powers and impose new obligations on trustees that will be impossible for them to meet. It is the logical next step along the route first set out by the Harris Progressive Conservative government in the 1990s, to decimate local government and curtail citizens' access to decision-making.

Section 4 of Bill 177 sets the stage for this by enabling government to make regulations about the roles, responsibilities, powers and duties of boards, directors of education and board members, including their chairs. This gives the provincial government carte blanche to fundamentally change school boards as and when they see fit. Prior to Bill 177, the relevant section of the Education Act, which is 11.1, referred only to regulations about "schools or classes established under this act." The government could regulate broad, general matters like the establishment or dissolution of a board, could set and change board boundaries, establish procedures for elections and so on. This is a radical departure from previous regulations and, we believe, puts board members under the direct supervision of the provincial government.

To make this perfectly clear, a new section of the Education Act which would be changed under this bill, clause 218.1(d) requires board members to "support the implementation of any board resolution after it is passed by the board" and then restricts trustees' ability to do the work for which they are elected since they must "refrain

from interfering in the day-to-day management of the board by its officers and staff;"—that's clause 218.1(e). Does this mean that trustees will no longer be able to criticize such a resolution for fear of appearing unsupportive? Will they no longer be able to ask board staff questions on behalf of, or advocate for, their constituents? Who will have the power to adjudicate these matters? What problem is so serious that it requires such a remedy?

These two obligations would appear almost humorous if they were not so fundamentally undemocratic. As the current government surely must understand from its time spent there, opposition provides the essential balance to our parliamentary system. Representatives at any level of government must be able to advocate, question decisions, seek information and so forth on behalf of their constituents; otherwise, they are irrelevant. It's not surprising, then, that in a legal opinion sought by Campaign for Public Education, law firm Sack Goldblatt Mitchell indicated in its report that these obligations could trigger a constitutional challenge since they appear to limit the freedom of expression of school board members, contrary to section 2(b) of the Canadian Charter of Rights and Freedoms.

While it's true that there's give and take in all political relationships, Bill 177 seems to take powers away while it provides or gives obligations. The change in the act would say that:

"(1) Every board shall,

"(a) promote student outcomes specified in regulations made under section 11.1;

"(b) ensure effective stewardship of the boards resources:

"(c) deliver effective and appropriate education programs to its pupils;"

Now, here's one problem, and it's remarkable to me that this could actually be appearing in a bill: What student outcomes shall be promoted? What do you mean by "student outcomes"? The bill, I suppose, is going to rely on regulations—which is a scary prospect in itself—to define that. What is an "effective and appropriate education program?" Again, I suppose this will be something the ministry can work out after this bill is passed.

That's been left wide open to interpretation by the government of the day. Requirements of this kind could attract litigation, especially during these times of continual spending cuts, if parents believe that boards have not delivered something, however vaguely promised.

How will a board's success in these efforts be judged? Will the justifiably derided EQAO be the measure of choice to determine whether or not a board has promoted such student outcomes—whatever they are? The tumult that attended the Mike Harris school board amalgamation cum budget cuts cum ministry micro-management was rationalized by Ontario's middling performance on international tests of mathematics and science; a situation that in light of Ontario's diverse population back in the 1990's—and of course, still today—was perfectly normal. The potential for misinterpretation is clear.

What is the consequence if a board does not meet the Ministry of Education's questionably defined outcomes?

Mr. Rosario Marchese: They take over.

Mr. Dudley Paul: Okay. I was going to come to that, but thanks.

The governance review committee in April 2009, recommended a "continuum of measures," and if a board is not meeting whatever those outcomes, based on evidence-based assessments, ultimately a board could be placed under supervision.

Aside from the obvious problem of legislating responsibility for duties performed by someone else—in this case school board staff—this section puts even more focus on teaching to the EQAO or whatever other test of the day might appear. It is not the view of Education Action: Toronto, that the purpose of education is to pass EQAO.

Lest this new obligatory trend be uncertain, section 26 of the bill amends the Education Act 218.1(a) and (c) to require trustees to participate in school board meetings and committees, to which they must bring concerns of the parents. What happens if they fail to bring these concerns? How are they to determine what concerns must be brought and what may be left out? They must attend all meetings. There is an attendance clause in this. As far as attendance is concerned, what constitutes adequate attendance? Is this going to be two meetings, six meetings or three meetings? It doesn't say.

Another objectionable amendment provided by section 26 grants the Minister of Education authority to impose standards of conduct on board members, as well as consequences for breaching them, admonishing them to "maintain focus on student achievement and well-being."

Should a trustee breach the code of conduct, he or she could be censured by the board, docked pay, or barred from committees and so forth. I'm sure you're well aware of it. Sections such as these appear to outline a more stringent job description than those laid out for teachers and administrators. The difference is that teachers and administrators are employed by school boards, while trustees, up until now at least, have been elected.

Trustees, as I say, are elected, not employed by the province. It's interesting, as I've been listening to some of these comments, how rarely the term "elected" came up. But they are elected, I believe.

This fundamental change in the relationship between two elected governing bodies is rather like the federal government holding provincial legislatures directly accountable to meeting some infrastructure goal like, perhaps, highway construction or maybe imposing a code of conduct on them, because sometimes the provincial Legislature gets to be a bit raucous. Sometimes people do the wrong thing and make foolish mistakes to which perhaps attention needs to be brought. Yet it seems to me that in all these cases—particularly listening to the Toronto Catholic board's presentation—something was done about it. There was a capacity to do that.

Who would ever want to be a trustee under these circumstances? I think it would at least be more honest

for the provincial government to eliminate school boards entirely and run them out of field offices. It may be foolhardy, but it would be honest. But then, of course, perhaps, the true underlying purpose of the boards might be lost—to serve as a buffer between parents and provincial government policies.

Bill 177 is, in the view of Education Action: Toronto, a dangerous piece of legislation, as poorly drafted as it is fundamentally undemocratic. It needs to be withdrawn and rewritten to ensure that:

- (1) yrustees may represent their constituents as vigorously as they have in the past;
- (2) they are not given obligations that they cannot meet and which may put their school boards in jeopardy; and
- (3) they are not patronized and hampered by rules governing petty aspects of their roles.

If the present Ontario government truly believes that a strong public education system is the foundation of a prosperous, caring and cohesive society, it should address fundamental problems of how schools are funded, as promised when first elected in 2003, rather than emasculating school boards in the guise of improving student achievement.

1630

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Paul, for your exactly timed remarks on behalf of Education Action: Toronto. I apologize for some of the additional sound effects we're having.

THAMES VALLEY DISTRICT SCHOOL BOARD

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter, Mr. James Stewart of the Thames Valley District School Board, to please come forward. Welcome and please begin.

Mr. James Stewart: Good afternoon, Mr. Chair and panellists. Congratulations two in a row on Bill 177 that I'm going to speak to.

At Thames Valley, we feel the bill is well intended. It's very noble. We're thankful for some of the provisions in it. We're very supportive, as any trustee on this board worth their salt will do anything they can to move public education forward.

We agree with part of the descriptions of roles and responsibilities. As far as code of conduct is concerned, you've heard a lot of discussion here today, but we have our own code of conduct. Essentially our opinion is what's good for the goose is good for the gander. So if trustees are going to have their own code of conduct and we're going to be the guinea pigs and it's going to move on through the rest of the elected people in the province, then we're fine with that. We feel a little isolated that it's just trustees and not city councillors. I don't think that breaches of code of conduct are specifically the domain of school boards as opposed to city councils, at least not in the papers that I read.

It may come as no surprise to the people who drafted this regulation and this bill that school boards are not happy. That's not meant to be a surprise, I don't think, because it does diminish the role of a school board. If the intention at Queen's Park is eventually to move towards no school boards. I think you're well on your way. The question is whether for the sake of public education that is the way to go to serve public education and to serve students.

As trustees, we know already because the amount of money and policy that's allotted from Queen's Park—a tremendous amount of our budget and a tremendous amount of our money is already predisposed at Queen's Park and we have very little autonomy at the school board, but we still manage the very best we can.

I'm concerned, and my board's concerned, that as we move forward, there are a lot of difficult decisions coming for education. We at Thames Valley have closed about 18 schools. It's very contentious. There's lots of change. There's lots of difficult decisions coming. Our sense is that those decisions—we're not sure, but we don't think anybody in this building wants to vote to close a school in their own district. That has been the domain of school board trustees. It's probably the most difficult thing in politics.

I voted to close my children's high school last year. I sat in front of some parents of 100 students in school this week and they asked me why their school was closing. I explained to them, and when I got done explaining, I realized that most of it was provincial policy. Facility is approved at Queen's Park, money is approved and staffing is approved. The provincial benchmarks are negotiated at Queen's Park.

My message for the committee here is—and I spoke with the minister earlier this week—we realize that each organization has to stick to its shared—we have to share the competency. There are things that can be done at Queen's Park that are done more competently here as opposed to being done in a smaller organization at school district level. I think that the answer for the students at the small schools is—I'm almost to the point now, and I guess after the next election and this legislation goes through, it's going to be very easy to blame the provincial government for all the bad news in public education.

School boards aren't important here; what matters here is student achievement. We do our very best for these kids because it's a tough old world going forward. Our fear is the important innovation, the invention, the collaboration, the things that we've seen across this province that have really made a difference haven't started at the upper bureaucratic level. Whether it's elearning, safe schools, audit committees, anything like that, they start in smaller organizations and they're adopted by the larger organization. The province has done a great job at funding safe schools and taking that innovation and moving it province-wide.

We see that there are dual roles and dual responsibilities here. The challenges ahead for education: I think that the smaller district boards—and I realize you have some big district boards and I don't want to paint everybody with the same brush, but the kids need that and the future's going to need that.

I think it's beyond dispute that the minister is the boss of education in the province; any trustee worth their salt knows that. The whole issue about supervision or not supervision—we have to pursue the act, pursue the regulations and we have to do our best for kids, and any trustee who doesn't do that, or any board that doesn't do that deserves the wrath of the minister or whatever the applicable legislative regulation is. So I think that that may be a little unsettling in the regulation, but at the end of the day it's beyond debate: The Minister of Education is constitutionally responsible for education.

I just want to say to the government and to the drafters of this legislation, we're thankful for the good parts of it; we have concerns about the others. We're not speaking as trustees-because if we thought we could help the kids, we'd all resign as trustees tomorrow. It's not about trustees; it's not about boards of education. It's about getting it right.

We want public education to prevail—it has had its challenges in recent years—for the health and safety of our kids and our futures.

I'll conclude by thanking the panellists and the committee members who are pursuing this and doing all they can for public education, because the board of trustees and all trustees in this province are very thankful for that.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Stewart. About a minute or so per side, beginning with Ms. Witmer.

Mrs. Elizabeth Witmer: Thank you, Mr. Stewart. I would agree with you that closing a school is never easy, but I remember closing many when I was chair of a

I appreciate your coming forward and pointing out there are some good things about the bill and other things, obviously, that need to be challenged and changed.

The Chair (Mr. Shafiq Qaadri): Mr. Marchese.

Mr. Rosario Marchese: Thanks, James. I know you said some kind words about the bill, saying it's wellintentioned and it's noble, even—I don't know how you found that word—but I think it's one of the worst pieces of legislation that I have ever had to deal with.

After reading this bill, do you think there is any role

left for trustees, as elected members?

Mr. James Stewart: I think it's diminished, but at the board we're still going to find a way, because that's just the nature of the beast. The role for trustees, after this legislation, is just to find new ways, innovation, invention; provide a positive working environment. It's going to be harder and harder to find a reason to be a trustee, but I'm sure there are lots of people who are still going to endure and still going to pursue it.

I think this needs to be reconsidered over the long term. This has to stand the test of time. We can't look at things in the narrowest possible terms, in the next couple of years. If school boards are on their way out, then that's fine. I'm here, and I'm naive, and maybe that's the way it's going to beThe Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese, wherever you are, and to you, Mr. Stewart.

We'll now move to the government side. Ms. Sandals.

Mrs. Liz Sandals: I think we have substantial agreement here. Closing schools is the hardest thing I've ever done as a politician—some before, when we had taxation rights, and some after. I too have closed a school that my kids went to.

You mentioned that your local board has a code of conduct, and the legislation allows you to keep that. I wonder if you could tell us what's in your code of conduct.

Mr. James Stewart: I don't have it in front of me, but—

Mrs. Liz Sandals: For example.

Mr. James Stewart: We actually have a code of conduct, and then we have our board bylaws. But essentially—and forgive me for not being a detail guy—it is all the principles of conduct, of integrity. You're there for the kids. You stick to the rules of governance.

I realize some boards are broken, and I don't know whether this is going to fix it, but we at Thames Valley work very hard on governance and on trustee professional development. We are a large board so we have the luxury of that; I think we're the third- or fourth- or fifth-largest board in the province.

I understand the concerns. If you've got some trustees and some boards out of control, maybe this is what you need. You've obviously got some city councils too. Maybe this is a good example to set province-wide and paint everybody with the same brush.

Mrs. Liz Sandals: Ah.

Mr. James Stewart: Well, I mean—

Mrs. Liz Sandals: Sorry, that wasn't at you. That was at the noise.

Mr. James Stewart: I'm saying that in isolation; it looks like the trustees can't rein themselves in.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals, and thanks to you, Mr. Stewart. Once again, I apologize for the antics back here.

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JUSTICE FOR CHILDREN AND YOUTH

The Chair (Mr. Shafiq Qaadri): I'd now like to invite our next presenter, Ms. Mackinnon of Justice for Children and Youth, to please come forward.

Interjection.

The Chair (Mr. Shafiq Qaadri): Yes, we'll distribute that for you. It's fine. Thank you. Please begin.

Ms. Martha Mackinnon: Thank you very much for the opportunity to be here.

I wanted to start by saying that this bill, Bill 177, contains, I think, one of the single most important improvements in the Education Act that I have seen in my lifetime, and I'm older than I care to admit.

Mr. Rosario Marchese: This bill?

Ms. Martha Mackinnon: Yes. One of the characteristics of it is the single best improvement that I've seen.

Something that has always puzzled me is that exceptional students who are identified as having special learning needs have long had the right—as they should have had—to appropriate programs and services. But there was never a right to education for the unidentified student; they had a right to go to school. This bill says that one of the central core duties of trustees and of school boards is to ensure effective and appropriate education for all students. That is, to me, a thing that is unarguably an improvement and a wonderful thing.

A second thing that I think is part of the trend of today that I am strongly supportive of is the notion that boards have audit committees. I think most levels of government and of non-profit entities are finding it beneficial for themselves and for others to have audit committees.

Those are my huge, general reasons to be strongly supportive of much of Bill 177. Justice for Children and Youth looks at things entirely through the lens of how it will affect students and, therefore, we do have some suggestions for what we believe would be improvement.

I thought I'd give you the first example first, which is that the bill would amend the legislation to say that what education is, what its foundation is and what it's about is to help create a prosperous, caring and cohesive society. One of the observations of my office over the last five or 10 years is that our society and, in particular, our school societies are becoming less tolerant of dissent and of vigorous debate, yet schools are, in fact, supposed to be creating a climate where people learn critical thinking and can debate.

I looked up the word "cohesive" in three dictionaries, and in each of the dictionaries I happened to grab from my office there was some notion that the word cohesive includes the idea of "united" or "unified" or "consistent." I am concerned that that word, which sounds sort of like motherhood—why shouldn't we have a sort of cohesive society?—could be used to stifle dissent. I've made suggestion for a change, which would be something that, to me is, uncontentious, but I leave in your hands, which is that it is civil society that we want even more than a cohesive one.

I am, again, delighted to see that school boards would be required to have multi-year plans, but I was surprised that there is no ministerial oversight of those plans. Again, comparing to the special education world, school boards have been required to have special education plans for years and to submit them to the minister. The minister doesn't approve or disapprove, but the minister can require changes if they don't meet the provincial objectives. I would suggest that the same structure ought to be in place for multi-year plans to ensure that school boards are moving hand in hand with the Ministry of Education in improving the outcomes and goals for the students of Ontario.

Again, I have a technical suggestion on codes of conduct. The legislation, as currently drafted, does not make it clear whether the very trustee whose behaviour is being challenged is allowed to participate in, vote on and investigate himself or herself. Again, I don't know

whether that's technical, but I would suggest that it ought to be changed.

The last point I'm going to make before I allow members of the committee to question me is that I think it is critical for all people to have sections—I think the code of conduct is a good idea. We've had one for students; we've had one for everyone on school property. I don't see why there shouldn't be codes of conduct for trustees as well. As you in this room, in particular, all know very well, one of the hardest things for an educator to explain to students when they get back to school—after a no doubt diverting visit to Queen's Park—is why the people here are allowed to behave so much worse than they are in school.

With that unpleasant note, I will end my presentation. I have distributed enough copies. Sadly, given the lead time, it's not bilingual, so I apologize for that.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Mackinnon. About a minute or so per side, beginning with Mr. Marchese.

Mr. Rosario Marchese: Martha, thank you. I have a great deal of respect for your work, I really do, and I agree with most of everything that you've ever done or said in this place, except—

Ms. Martha Mackinnon: Except today.

Mr. Rosario Marchese: Except today, yes. I understand your point about the whole idea of the purpose—and I think, by the way, this bill is about the purpose, not the first two parts but the third, which has to do with closing the gaps.

How much time do we have, Chair?

The Chair (Mr. Shafiq Qaadri): You have 30 seconds.

Mr. Rosario Marchese: This responsibility of closing the gap is on the shoulders of the educational system, on teachers and trustees, directly and indirectly. It's not on the government to provide for the class differences that we have in society, for poverty differences, for dealing with issues of race, for that matter, although they could and should. But in terms of mental illness, in terms of special ed, a lot of these teachers need support. It can't be something the teachers alone can do.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. Ms. Sandals.

Mrs. Liz Sandals: I'm just reading this really quickly. I'm looking at section 6, on pages 5 and 6, and—thank you—you've made some recommendations of a technical nature around how to administer a code of conduct. Can you quickly tell us why or how in a summary?

Ms. Martha Mackinnon: Well, I had thought that the purpose of the legislation was to ensure that you can't hide if there is an allegation of improper conduct that's in breach of the board's own rules or, I would suggest, in breach of the statute—because at the moment, breaching the statutory duties wouldn't count. That was one thing I assumed was just a technical oversight, but I didn't do the drafting, so I don't know.

The next thing is, having investigated, I understood that the purpose was for supporters to know; otherwise, it

couldn't affect their votes the following time. You couldn't say, "Someone has been in breach of our principles."

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals. To the PC side: Mrs. Witmer.

Mrs. Elizabeth Witmer: Thank you very much, Ms. Mackinnon, for your advocacy on behalf of children and youth. I look forward to reading your submission a little more thoroughly.

Ms. Martha Mackinnon: Yes, I'm sorry it wasn't here earlier

Mrs. Elizabeth Witmer: No, it's okay. It's a lot to do in one afternoon.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Witmer, and thanks to you, Ms. Mackinnon, for your deputation and presence on behalf of Justice for Children and Youth.

Ms. Martha Mackinnon: Thanks for the opportunity.

TORONTO AND YORK REGION LABOUR COUNCIL

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward, Mr. Cartwright on behalf of Toronto and York Region Labour Council.

Interjection.

The Chair (Mr. Shafiq Qaadri): Yes, we'll distribute that. Welcome, and please begin.

Mr. John Cartwright: Good afternoon, ladies and gentlemen. The Toronto and York Region Labour Council represents 195,000 women and men who work in every sector of our economy in Toronto and York region. We have affiliates from the education unions who are in the public and Catholic boards, both in Toronto and York region. Of course, we see the incredible difference between boards that are in decline and boards that have tremendously fast-growing populations of school-age children.

This council has been intentionally involved in the issue of publicly funded certainly for more than the last decade, starting with the forced amalgamation of the Toronto board; the imposition of a provincial school funding formula, which was clearly inadequate for the task at hand; the fight around democracy for our school boards with the provincial takeover of the Toronto school board, Hamilton and Ottawa; presenting to the Rozanski commission on the issue of what the funding formula should look like in the future; and dealing with the very real issues raised by Julian Falconer's report, looking at the violence and racial profiling equity within our board.

Our main concern with Bill 177 is the issue of democracy. The bill sets out very broad regulatory power, which means that many of the real implementation issues that are covered under the bill are going to be set up by regulations that will not be subject to public scrutiny.

The main area that we think is of concern is the limitation of the role of trustees. The fact is that, in these number of years, school trustees have had to have

incredible courage to speak out about issues affecting the children and adult learners in their school boards and affecting their communities and challenging, in some cases, the wisdom of the provincial government.

I've only handed around one piece to you, and that is an ad from 2002 put out by the provincial government at the time. It was lambasting the school boards of Ottawa, Hamilton and Toronto for their refusal to gut publicly funded education in their boards, to gut the kinds of things that had the province's auditor Rosen come in and say it was outrageous what they were spending on everything from books to labs to arts and swimming programs and instructions. That was the wisdom of the provincial government of the day.

The current government, of course, suggests and stands proudly to say that that's not their vision of publicly funded education. They believe in a very different view of publicly funded education. However, when you look at Bill 177, the censuring opportunity to take trustees who are speaking out on behalf of their constituencies, whether that's on funding, shutting programs and demolishing playgrounds in the past, equity, issues of racism and gender discrimination or achievement of working-class kids—the opportunity for those strong and courageous voices, whether or not they're challenging provincial dictate or, in fact, the majority of other trustees in a board, is crucial in a democratic society.

We are very concerned about Bill 177 and the potential for this to be misused. Whether that be by the current government—and we have tremendous respect for the intent of the minister and the current government on education—or a subsequent government, it's no accident that the crisis in our schools some years ago came from a funding crisis. Just last week, the Minister of Finance announced a \$24.5-billion or \$25.4-billion deficit that the province is expecting, and we expect to see yet again another funding crisis visiting in our schools, as are municipalities.

So there will be a very difficult series of decisions being made in the future around what is a legitimate role of school boards in our changing society and what are the very difficult funding decisions and policy decisions that must be made in our changing society. Of course greater Toronto, not just the city of Toronto but all across the GTA, is the destination of choice for the vast majority of immigrants to Canada. Their children are entering schoolrooms that have to change literally monthly because of the nature of who we are as the people of the GTA.

Our education affiliates will talk in more depth about their concerns of the use of standardized testing and how that provides the yardstick for the action of the ministry or the minister to intervene in the role of school boards. That's not an area of expertise that our council has, but we would say we would also have a concern about that.

Looking at my own daughter's grade 6 testing when she was taking it back many years ago, just as standardized testing came in, as somebody who excelled and was an honours math student in grade 13, I had difficulty answering some of the questions because of the difficult way they were posed. We still have some real concerns about teaching to the test, about the misuse of standardized testing and how that might distort the outcomes in the allocation of resources within our board.

In summary, we agree with the concerns raised by the Toronto Star in its editorial just in the last few days about the impact of this bill on democracy, on the ability of trustees to speak truth to power and on the possible distortion of the mandatory school testing in relation to the role, then, of the minister or the ministry in intervening in the democratic access of the schools. It's unfortunate that this bill is in front of us with the recent cloud of the Toronto Catholic board fiasco, but I urge you to cast your mind back to some of the very difficult challenges facing trustees and the Ontario government in years past to understand why our concerns are deep-seated and why we believe that in this kind of a society, everybody must have the ability to bring forward their wisdom and act accordingly.

The Chair (Mr. Shafiq Qaadri): Under a minute per side. Mrs. Sandals?

Mrs. Liz Sandals: Yes. The purpose of Bill 177—or at least, in Bill 177 for the first time we have a purpose clause. One of the things that the purpose clause talks about is enhancing student achievement and well-being. I think one of the things that has come up for discussion is how we recognize well-being. Have your members given some thought to how we would recognize not just the student achievement side but the well-being side as well?

Mr. John Cartwright: Yes. In fact, we have significantly. It's interesting because in this document the government of Ontario said that they were taking over school boards because they weren't upholding their role in student achievement, so—

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Sandals. To the PC side.

Mrs. Elizabeth Witmer: Thank you very much, Mr. Cartwright, for your presentation.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Witmer. Mr. Marchese?

Mr. Rosario Marchese: Thank you, John. I want to speak briefly to the issue you raise, and that is the issue of democracy. What typifies this bill is the code of conduct, and I think this is one of the most useless bills that I've ever seen, one that diminishes trustees unlike anything else I've ever seen. When they describe the code of conduct as, "attend and participate in meetings"—it's silly, "to attend and participate"; "consult with parents," which is what they do; "bring concerns of parents" to the board; "support the implementation of any board resolution," meaning they're elected but they can't disagree with anything the board passes; and "Refrain from interfering in the day-to-day management of the board." Doesn't that take away everything that a trustee could or should do?

Mr. John Cartwright: In particular, those last two points are very, very disturbing, that a majority of a board could censure and in fact dock the pay and income

of trustees if they were in a minority and that the ministry could use those issues in order to come back on a trustee-

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese, and thanks to you, Mr. Cartwright, for your deputation on behalf of Toronto and York Region Labour Council.

ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION, **DISTRICT 21, HAMILTON-WENTWORTH**

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters, Ms. Mancini and Mr. Marco of the On-Secondary School Teachers' Federation of Hamilton-Wentworth. Welcome and please begin.

Mr. Anthony Marco: I'd like to convey Ms. Mancini's regrets. She is the president, I'm vice-president of

OSSTF, District 21.

I'd like to thank the committee for the opportunity to make this submission on behalf of the OSSTF, District 21, Hamilton-Wentworth. I apologize in advance, being an English and drama teacher, for reading because if I went extemporary on this it might take me 10 hours, much less 10 minutes. I'm trying to refrain from going on too long.

With the term "student achievement" ready to be cast in stone, or at least the Education Act anyway, as a key goal for all students, education workers and now trustees across Ontario, one should have a concrete definition in order to set goals and know the potential risks for job

performance.

What, then, is our clear concrete definition of student achievement? I suppose one could, if they wished, look to the Education Act and find what the Ministry of Education has deemed student achievement to be. After all, when Bill 177 passes, school boards will be able to be taken over by the ministry. Locally elected trustees could be denied their abilities to represent their constituents. You would think the trustees and municipal voters across the province might like to know what standards they are being held to. But, alas, no such definition exists in Bill

In lieu of a provincial definition, perhaps local school boards could define their own parameters for student achievement in a clear, concise manner so everyone could easily get on board. After all, the term is plastered all over school board websites and PR materials while becoming the blanket defence for every questionable action a board takes. If they close a program or a school, if they add fees for specialized programs, if they seek to segregate students by gender or ethnicity, it's all under the guise of student achievement. Surely they must have a working framework to define the term, yet it's nowhere to be found.

In lieu of a concrete definition, which, one thinks, should be required for a term that attained ubiquity across Ontario's education system, perhaps a teacher is expected to cobble together some sort of amorphous metric of

what student achievement is on an individual basis. I've been told for years that a diploma is important, so let's include that piece. I've been sold on the corporate stock ticker stats of EQAO scores, so we'll assume those are important too. I could throw credits in there as well, but credits are a subset of the diploma, so we'll assume you can't have one without the other. And while EQAO was originally a subset of graduation as well, the ministry has found ways around that, so we must consider it on its own.

1700

In reality, then, if we are to parse down student achievement for the purpose of this ministry and this bill, we are left with two things: a diploma and EQAO scores.

To test any definition, one should reach for the parameters and exercise the tolerances that constitute it. For instance, if a diploma is our first indicator of student achievement, doesn't that mean a student with 10 or 20 marks of 50% on the way to a diploma has met the criterion? Are grades even relevant any longer, or have credits been reduced to pass/fail? Is a student with 20 credits at 50% someone who has achieved? If so, the Ministry of Education can incorporate a very simple baseline into this standardized definition. But the ministry always said that a level 3 or a mark in the 70s is the provincial expectation. Does it make sense, then, that a student can achieve by getting a diploma, yet not meet the provincial expectation? It's quite unclear as to which direction the ministry wants to go with respect to including credits in any standard definition. If accumulated credits become suspect, then doesn't that make the resultant diploma suspect as well?

Credits aside, EOAO scores must surely be an indicator that can fit into the "student achievement" definition with little to no fuss. We should simply be able to assume that passing the EQAO tests must be good enough to constitute achievement. We should be able to assume that, but we find it difficult to do so because, I can tell you as a teacher, EOAO tests are insulting to my profession.

The Education Quality and Accountability Office, by its very name, suggests educators are not doing their jobs. At some point in recent history, someone at the Ministry of Education became convinced that teachers educating students and evaluating their work by attaching a grade and associated skills wasn't good enough. Surely teachers couldn't be trusted with education, and there had to be a way to tell if students weren't really getting the education they deserved.

There's a subtle irony in that the EQAO evolved out of fears of inconsistency about education in Ontario. The selfsame EOAO scores which now prompt visions of administrative career advancement under the guise of student achievement goals have prompted fear on behalf of education workers in Ontario about the state of education.

And so we've come to the real crux of the issue: In talking of student achievement, very rarely does one speak of education. People talk of scores, stats, credits, diplomas and, in the end, far fewer people are concerned with a student's education than a student's stat sheet. I'm not a math teacher, but two simple equations are clear to me: Achievement does not equal education, and data collection does not equal learning.

I was incredibly disheartened, though not very surprised, upon perusing a draft of the proposed Learning for All K-12 document that came across my desk a couple of weeks ago. While I've never been a fan of Deming's disciples of education that formulated the effective schools movement's learning communities and backed No Child Left Behind in the United States-and this draft document is rife with their quotations—at least they spoke of education and learning. Yet in the document, the ministry has chosen to place their achievement agenda language side by side with these sources as if to co-opt their credibility. We cannot make achievement equal education by proximity of words on a page. Achievements are trophies earned at the end of a process; education is the process. To place more importance on the trophy than the process is demeaning to all education stakeholders.

Education workers are providers, mentors and facilitators of education. We are not stockbrokers trying to maximize a student's EQAO number so we can buy low and sell high. We don't treat student learning as graphing points; we view it as a process. We are loathe to reduce a year's worth of dedicated curricular efforts to help educate students down to a data-inspired administrative mandate of, "Let them redo one assignment so that you can let them pass this course."

Finally, and perhaps seemingly contrary to the tone of my submission to this point, while we don't really see a need for this soon-to-be enshrined undefined term of "student achievement," we are actually all for students meeting whichever nebulous definition of "achievement" is the order of the day, as long as it's measured on the back of true learning and real education, and not at the expense of it.

I'll take any questions.

The Chair (Mr. Shafiq Qaadri): Thank you. A minute per side, beginning with Ms. Witmer.

Mrs. Elizabeth Witmer: Thank you very much. We've had a few people come in front of us today who obviously are looking for the definition of "student achievement," and it's rather concerning.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Witmer. Mr. Marchese.

Mr. Rosario Marchese: Thank you for the great presentation. I would bring you to the purpose on page 1: "All partners in the education sector have a role to play in enhancing student achievement and well-being, closing gaps in student achievement"—which you didn't speak about—"and maintaining confidence in the province's publicly funded education system." It's about closing the gaps in student achievement. Not only do they not define what student achievement is—except that we know it's defined by EQAO test scores at the elementary level and secondary level as well; and of course staying in school

and getting your diploma. But closing the gap is the real purpose. That's really what this is all about.

What do you have to say about how you have the sole responsibility of closing the gap between those who do well and those who don't?

Mr. Anthony Marco: I wish I could say that I knew how to close the gap, but I don't know what student achievement is. I don't even know for sure that it's EQAO. No one has told me that. So it's going to be very difficult for me to do my job and close the gap if I don't know what the gap is, how it's identified or what the system is that works behind it.

Mr. Rosario Marchese: Thanks.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. Ms. Sandals.

Mrs. Liz Sandals: You mentioned the whole issue of whether or not we should look at credit accumulation, but I wasn't really clear whether you were suggesting that that would be a good thing to look at, because it does, in fact, measure incremental progress along a continuum.

Mr. Anthony Marco: What I'm trying to say here is that there is a lot of pressure—and I can speak directly from my experience in the Hamilton board—that is being passed down from this ministry right now through superintendents and through principals to improve scores, to improve graduation rates. At its face, I think that's admirable, but I think, at the end, where it's being done when it hits the classroom teacher, it ends up being, "Make these kids pass no matter what." That's the message that we're hearing back at our council meetings every month when I sit there as an OSSTF representative.

The pressures that are being downloaded upon teachers have little to do with curriculum or actual success anymore; it has more to do with, "Get that 50% for them no matter what you have to do. If it means they get to do this assignment late, get them to do the assignment late."

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals, and thanks to you, Mr. Marco, for your deputation on behalf of the Ontario Secondary School Teachers' Federation of Hamilton-Wentworth.

JOHN DEL GRANDE

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter, Trustee John Del Grande, to please come forward. We'll distribute any materials you have, and I'd invite you to please begin now.

Mr. John Del Grande: Thank you. I'm here as an individual trustee of the Toronto Catholic District School Board. I've been a trustee since 2003.

When you sort of take the face of the legislation—my board has already put together a submission, and by me merely being here, I can almost be deemed to be going against the board resolution, because they passed a motion to bring forward a submission here and I'm bringing my own. It's just one of those unintended consequences of the legislation that we need to consider.

When I originally signed up for this job, the job paid \$5,000 and I signed up for it. There's no denying that

output equals compensation, as there is obviously a limit to volunteerism. I figure that the school board is about setting strategic direction, budgets, relaying global concerns up and bringing your outside experience in your role as trustee into this realm. I quickly realized that trustees are advocates, policy-creators, juries, watchdogs, mediators, deal-makers, assessors, ombudsmen and strategists. Most trustees themselves are not educators.

We've heard of trustees inspecting roofs and parking lots while others stay barely awake at meetings. I heard this legislation's about role definition, and role clarification is good, but it has got to be put in writing. It gets back to theme of the legislation, which says, "Wait

for it; it'll be in the regulations later."

I've submitted my recommendations based on Bill 177. I've kept my recommendations mainly to the items germane to the amendments and additions presented within the bill, but as you can imagine, the opportunity for improvements and further additions is vast.

I've presented 11 recommendations on paper, ranging from themes of transparency, rule of law, democratic process and parent and electorate respect, which I think are sometimes missing. I'll leave the majority of comments to those other issues for people who have already been here this afternoon and defer to that expertise. Good legislation is set regardless of the government of the day. This is why we need to have a long-term vision and have a complete bill, which this bill, unfortunately, does not

I want to steer my comments today at the crux of the issue, in the sense that many parts of this legislation seem to be rushed to get something in the act and then add to it later through regulation.

As school boards have become amalgamated over the last decade, the role of school boards has become more divested in business functions. Some of the largest school boards have under their realm tens of millions of dollars in property value, thousands of employees, budgets in the hundreds of millions a year, not to mention the tens of thousands of students they're responsible for educating. Our board itself has a budget just shy of a billion dollars. It sort of puts the eHealth budget in perspective.

There's no denying student achievement—our educators try to do the best they can in the classrooms. When boards manage hundreds of millions in properties, a sizable labour force and the health and safety of our thousands of students under their care, the crux of this bill is that governance hasn't effectively dealt with those issues, other than restricting board debentures. At the core, modernizing the Education Act covers such broad topics as accountability of entities and people to governance and accountability.

One has to question the real agenda. We still need to enshrine transparency and parental and student rights. The gorilla in the room—although this legislation was pieced together before some of the antics there—is the Toronto Catholic District School Board. Things don't happen overnight, and they didn't happen overnight; they happened over a period of time. I, for one, as with the majority of trustees, didn't get booze and vacations. We were granted many expenses that were not quite expenses but were a casualty of trustees trying to exert control for their local needs. Policy and governance is the issue, and it is not addressed. The name of the act includes "governance" as well as "student achievement," and governance is not addressed.

We need provisions for automatic bylaw or policy reviews every set number of years. Our board probably at one point had policies dating back to the 1950s. The Education Act needs to be about parameters and mandatory controls. This doesn't truly modernize governance. It's a very subdued approach and only provides language.

The concern, and it's echoed by many, is that trustees themselves are becoming agents of the Ministry of Education. Our board has been under supervision now for 16 months, and one could say the reason we came under supervision is that we didn't have our governance right. Well, 16 months later, governance hasn't been fixed on our board. This act will not fix governance on our board.

On the surface, it seems to be about command and control, reasons to keep boards on short leashes, and it gives the government an out to blame the local decisionmaker although they hold all the purse strings. No other level of government puts in the hands of cabinet roles for other government layers. One supervisor of our board related that the expectation was to have trustees maintain the quo of a unity of cabinet. Well, trustees are locally elected, and that doesn't ring well.

If, for example, the demand from the ministry was to use our resources well, which seems to go along with "Now it's okay to close your schools," a directive could come down through provincial interest regulation and say, "Wipe away your excess capacity." No doubt space utilization is an important issue, but these community hubs actually increase success for the child. Mega schools may not be in their best interests. Being on a bus for an hour may not be in the bests interests of the student. Not being able to participate in after-school activities and parents not being local for meetings is also not in the best interests. It goes against the principle of the bill. Local respect and dollars seem to be missing. There are more things coming from central. Our board had some world-renowned programs that were being done because we had local control. Those things are probably gone tomorrow.

The code of conduct is an issue that continues to come up. What's missing is a statutory requirement for all trustees and officers to act on breaches, frauds or conflicts that they are witness to or that come to their attention. Again, another unintended consequence of this is having to support more resolutions.

The supervisor of our board shut down the Arrowsmith program. As trustees, we stood up for these parents and technically, by the letter of the law of this bill, we would be found to be guilty because we were going against a board motion, which was to shut down the program. In the end, the program got reinstated, but what it does is silence criticism, even if it's wrong.

We had the example of trustee benefits at the Toronto Catholic District School Board. When that motion went forward, I wasn't at that meeting, and I was one of the only ones to voice opposition. What would my punishment have been?

One of the other unintended, or maybe intended, consequences of this bill is more supervision. Ontario hasn't balanced its budget; maybe the feds should come send a supervisor here. The provisions speak about additional causes of supervision, particularly those of the provincial interest regulations. The board of trustees already has limited powers. It's always easier for one person to come in and set direction. Like we said, the supervisor can come in and do things, but the board of trustees can't do those things. The supervisor can meddle in the day-to-day affairs, but trustees are told not to meddle in the day-to-day affairs, so of course it's always easier for the supervisor to come in and set different things. That again comes back to my theme that governance is not fixed.

The public needs us now more than ever. I hope, especially to members of the government side, that some of the amendments that are suggested today will make it into the final bill.

The Chair (Mr. Shafiq Qaadri): Thank you. We have less than a minute per side, beginning with Mr. Marchese.

Mr. Rosario Marchese: Thank you, John. There are two snitch clauses here: one that permits you to snitch against somebody and the other on page 14 that says the director can snitch on any board member. Do you have a comment on that stuff?

Mr. John Del Grande: Well, I think we need to have a third party look at that because obviously, as happened in our board, trustees were reluctant to snitch on one another because you obviously want to get your things forward, move ahead in your community, so there needs to be a third party arm to do that. As it's laid out today, it will not be effective. It'll again just keep people silent.

Mr. Rosario Marchese: On page 2: "The Lieutenant Governor in Council may make regulations governing the roles, responsibilities, powers and duties of boards, directors of education and board members, including chairs of boards." What do you think about that?

Mr. John Del Grande: The Education Act is what people look for to be the bible, so to speak. These regulations could come from anywhere, although they have suggested that, "We'll consult widely on it." That could be the—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. Ms. Sandals?

Mrs. Liz Sandals: No questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals. Ms. Witmer?

Mrs. Elizabeth Witmer: Thank you very much, Mr. Del Grande, for your excellent presentation. I appreciate the detail you've gone into and also how thoughtful your

presentation is. Recommendation nine: I see you are totally opposed to supervision.

Mr. John Del Grande: Supervisors don't fix the root problems of boards, and they actually take away from the public at the end of the day.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Witmer, and thank you, Mr. Del Grande, for your deputation.

LINDA WARD

The Chair (Mr. Shafiq Qaadri): I would now call forward Trustee Linda Ward. Welcome, and please begin.

Ms. Linda Ward: First of all, thank you for allowing me to present on this very important piece of legislation. I am a trustee of a Catholic school board here in Ontario. I have heard many concerns and suggestions regarding Bill 177 from a number of trustees and also from many friends and relatives of mine scattered across Ontario. Their comments will be incorporated into my presentation. I am here as an individual; I'm not representing my board.

I will start with the first part of it, and that's section 1, where it's indicating "a strong public education system." I would ask that that be changed to "four publicly funded school systems" in recognition that there are four different systems offering a strong educational foundation for a prosperous, caring and cohesive society.

The next item is under "Purpose of education," and we certainly agree with the strong purpose of education. I will point out what the Ontario Catholic school boards put together: the Ontario Catholic School Graduates Expectations. Under those expectations is "a discerning believer formed in the Catholic faith community," and one of the examples would be "respects the faith traditions, world religions and life-journeys of all people of good will."

Under "Effective communicator," one of the indicators is "presents information and ideas clearly and honestly and with sensitivity to others"; as a reflective, creative, holistic thinker, "thinks reflectively and creatively to evaluate situations and solve problems"; as a self-directed, responsible, lifelong learner, "examines and reflects on one's personal values, abilities and aspirations influencing life's choices and opportunities"; under "a collaborative contributor," "achieves excellence, originality, and integrity in one's own work and supports these qualities in the work of others"; under "a caring family member," "values and honours the important role of the family in society"; and as a responsible citizen, "respects and affirms the diversity and interdependence of the world's peoples and culture."

I think these are very admirable expectations of any high school graduate here in Ontario, and I do have copies of this for everyone.

The next item I would like to point out with concern is professional activity days, where the government was going to set up guidelines respecting PD days—professional development days. What we are concerned

about is that with the government establishing policies and guidelines for criteria for PD days, there's a serious concern that Catholic boards would be able to continue offering a system-wide faith day as professional development. These professional development days not only feed the souls of staff but also help create a dynamic team spirit and enhance the morale of the entire staff.

The next item that I'm concerned about and that has been brought to my attention is parent involvement committees. We certainly believe in parent involvement in all of our schools. Without our parents being there, we're going to be hurting. I'm going to encourage that the wording be changed to "parent engagement." This sounds more welcoming and also, by using the word "involvement," it could be construed as parents having more say than they really do.

Parents could make a recommendation that the board does not adopt because the recommendation does not meet the needs of the entire school or board. This could cause a real sense of frustration on the parents' part. So I believe we should manage the expectations of the parents, that, "Yes, you are going to contribute. You are going to be engaged, but the trustees would be making the decisions."

1720

The next item is holding the trustees responsible for the achievements of the students. Again, there is a serious concern because the province holds the purse strings. If the province continues to cut funding for administration and professional development, there will be less and less adequate supervision and PD to assist teachers in meeting the needs of their students. With fully integrated education in the classroom, teachers have many more challenges than in the past. To ensure student success, teachers, EAs and administrators must work together, plan and adjust the delivery of education.

The next item I'd like to point out is under the Municipal Conflict of Interest Act. Under this one, I'm recommending, and many people have said the same thing, that there must be a change in the government. This change must be that the government must cover the cost of a complaint against a conflict of interest. Having the onus on an individual to pay the legal cost of a conflict charge creates a situation where no one is willing to file a charge of conflict. An example is the most recent case where a ratepayer had to pay out of his own pocket the cost of challenging a trustee with conflict. If the government is serious about stopping potential conflict of interest, they must pick up the costs, set up a panel, do something so that it is done effectively. It has been recommended to me by many people that this should also be for municipal councillors.

Under the issue of trustees, where a trustee might be chastised, it is indicating here that a meeting of the board should not be closed. I'm saying that the meeting should be closed. If the meeting were open to the public, one of two things would happen: Either there would be very little debate and no fulsome discussion as the trustees would be hesitant to ostracize a fellow trustee in public,

or the trustee in question would be publicly humiliated. Either outcome would not resolve breaches of boards' code of conduct.

Also, what has been brought forward to me and I agree with is that people would like to see a procedure put into place that is both fair and transparent in being able to remove a trustee who continues in a manner that is both injurious to the moral tone of the board or obstructs a board's ability to operate in a progressive, successful manner. Again, this was suggested for municipal councils as well as school boards.

Under audit committees, there is a concern with many school boards as to what the composition of an audit committee will be. With members of an audit committee being from outside of education systems, there could be a challenge as to what constitutes an acceptable expense. Also, what accommodations are there going to be made for school boards where their office is a distance from the audit committee member's home? Distance could prove a serious challenge for some boards being able to recruit volunteers for an audit committee.

In closing, I would like to share some common concerns that I've heard from across the province, and that is the continued erosion of trustees' and directors' powers, with a simultaneous corresponding increase in provincial powers. Education in Ontario is the best in the world. Having school boards and trustees and administration that have had the right to operate their boards in an autonomous manner has proven to be successful, and I would hope the members of this committee keep this in mind when they are making their final decisions on this important regulation.

Another huge concern that has been voiced to me is with the government implementing the regulations for Bill 78, the interest bill that passed a few years ago, and Bill 177, now being introduced. Are these the first steps to eliminating school boards, as New Brunswick has done?

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Ward. Forty seconds per side, beginning with Ms. Sandals.

Mrs. Liz Sandals: Absolutely no intent to eliminate school boards or trustees.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals. Ms. Witmer? Ms. Jones?

Ms. Sylvia Jones: A quick point of clarification: You mentioned that you were concerned about the erosion of trustees' and directors' power. Directors' power? Can you expand on that?

Ms. Linda Ward: Right now, everything is being mandated more and more down from the government in "You must, you shall" and what have you, to the point where it really has been very, very difficult to run certain things within schools. In my school board, for example, we had formed a wonderful partnership with Dow Chemical, Imperial Oil, hydro and some other ones, with our coterminous board, where we were offering an exciting science program for grade five students. These companies were supplying the hands-on materials that

would be needed, to the point where over five years, they contributed to over a million dollars' worth of supplies. Because of the way—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones. Mr. Marchese?

Mr. Rosario Marchese: Thank you, Linda. I'm going to try a different tack on a different issue here because there's nothing about governance—

Ms. Linda Ward: I'm sorry?

Mr. Rosario Marchese: There is nothing about governance in terms of issues that the trustees have raised before you. The only issue about governance is section 169.1, where they talk about, "Every board shall ... ensure effective stewardship of the board's resources." When I read that, as a former school trustee, it offended me, because it suggests that you're not managing the bounty that you're getting from the provincial government. How did you feel about that when you read that particular line? Because it suggests you're not using the resources you're getting very well.

The Chair (Mr. Shafiq Qaadri): The question will have to remain rhetorical, Mr. Marchese.

I'd like to thank Ms. Ward on behalf of the committee.

LONDON DISTRICT CATHOLIC SCHOOL COUNCIL AND PARENT INVOLVEMENT COMMITTEE

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward: Ms. Steel, Ms. Morell and Mr. Hurst of the London District Catholic School Council and Parent Involvement Committee. Welcome. You've seen the protocol. Please do introduce yourselves individually for the purpose of Hansard recording, and I would invite you to please begin now.

Mr. Craig Hurst: Thank you. My name is Craig Hurst. I'm a former school board trustee with the Simcoe County District School Board and a former member of the provincial parent board. We are here today to discuss true and effective embedding of parent engagement into the legislation. Specifically we bring forward three points: One is that section 17.1 of the current legislation should not be removed. Number two is that consideration for the legislation of parent trustees similar to student trustees with the same rights and responsibilities and sitting on school boards be considered. Number three is that we clarify parent involvement committee mandates and entrench a parent as the chair of parent involvement committees.

I would now like to ask Arlene to speak.

Ms. Arlene Morell: Arlene Morell, chairperson of the Thames Valley Parent Involvement Committee. There are an estimated 2.3 million parents of students in publicly funded education, who make up both a formidable potential resource and the largest single constituency for publicly funded education. Parents give credibility by providing a practical, culturally relevant contribution

from a unique perspective. With no governing parent body, parents have been and are the most under-represented partners in provincial education policy deliberations, despite our wealth of first-hand knowledge about our children. Accessing this parent knowledge and experience is critical to shaping policies that are responsive, appropriate, sensible and effective in the province. Our perspectives can help design and implement more effective programs and help reduce barriers.

Clear legislation is needed to bring parents into the decision-making process in a meaningful way. In 2004, Minister of Education Gerard Kennedy appointed 20 parent leaders from across the province. The task of the parent-led project was to give advice on how to create an independent, representative, province-wide parent voice accountable to parents. Over 1,150 submissions representing thousands of voices representing parents' views on education matters, to ensure that the parent voice at the provincial level remains inclusive and effective—they saw that a parent voice at the provincial level is something that would support and enable parents to speak directly to the minister and other decision-makers.

The more experienced parents voiced, "We have been asked this before and little has changed. When is someone going to act on our suggestions?" Including parents in the policies and planning processes is critical to building a trusting relationship between providers, ministry and school boards and consumers, parents and students. Taking this one step further by acting on their advice, this builds confidence in our publicly funded education. Listening to parents' perspectives and learning from our experiences can result in more responsive policies and programs that truly improve the lives of children and families across the province.

Ms. Linda Steel: I'm Linda Steel. I'm chair of the London District Catholic School Council and Parent Involvement Committee.

Please do not remove section 17.1 from the Education Act. Parents across the province have not even been told they are losing their provincial voice and that this government plans to renege on the promises made to Ontario parents in 2005. I refer you to appendix D to see the promises made.

The provincial parent board was silenced and shut down in August. Our reports were never published or acted on. Thousands of volunteer hours were spent creating a document that not only identified all barriers to parent engagement but the solutions to eliminating those barriers. The report is currently sitting in the minister's office collecting dust. Parents have been asking and asking for that information and provincial leadership to communicate their concerns.

The PPP did communicate their concerns and provide answers. It seems they will never reach the parents of this province. And now Bill 177 proposes to eliminate any inclusive, accessible provincial parent voice. This is not acceptable, does nothing to create confidence in the public education system or support meaningful parent engagement. Please see appendix A for further details.

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Mr. Craig Hurst: We ask you to strongly consider the inclusion of parent trustees in school boards, similar to the student trustees that currently exist under section 55 of the Education Act.

Parent trustees could be given the same rights and responsibilities, and limitations, as student trustees. There is no reason why a strong parent voice can't be legislated within the construct of a school board.

Ms. Arlene Morell: Clarifying and expanding parent involvement committee mandates and entrenching a parent as the chair: The PIC purpose is serving as a school council to the school board to strengthen local initiatives that enhance the engagement of parents to improve student achievement, by providing a direct link to the director and trustees. Parents must be in the majority, and the committee chairperson must be a parent.

To ensure a parent voice at the school board level, the

legislation must include:

—that the committee is a standing committee of the school board, and must be chaired or co-chaired by a parent who is not employed by the school board;

-that the committee is solely responsible for the

allocation of base funding;

—that parent members must form the majority, inclusive of the existing parent organizations; and

—that base funding shall not cover board employee salaries.

Committee function:

—to assist school councils and parent groups in establishing goals and actions to increase parent engagement;

- —to be consulted on and participate in the development of school and board policies and initiatives affecting education and the educational community as meaningful contributors;
- —to act as information conduits to parents, schools, boards, the Ontario Parent Council and the Ministry of Education:
 - —to develop inclusive bylaws;
- —to consult with school councils and parents on matters under consideration;
- —to make recommendations to the school board and the Ministry of Education on any matter that affects parent engagement and student outcomes.
- Ms. Linda Steel: Collectively, parents across this province raise in excess of \$700 million. School councils and parent involvement committees are not even supposed to fundraise, particularly for what is supposed to be a publicly funded education system. We are advisory groups, period.

Parents and students have no unions that can collectively represent their interests. Bill 177 will effectively eliminate the only accessible, fully provincial parent voice we have. How are we to interpret this? "Thanks for

the money. Now go away quietly"?

While there are outside provincial associations, these associations require membership fees, one of the first barriers to parent engagement; and most limit membership to certain groups with specific agendas. They oper-

ate outside the education system, and by definition they cannot represent all parents.

Bill 177 was supposed to be a governance review. Not once were parents advised during the round-table discussions that took place last February that their provincial representation was going to be removed from the Education Act. They still haven't been told. Why has there been no public or parental input requested on the removal of 17.1? Who is the Education Act supposed to serve?

Despite their claims otherwise, this government is quietly but systematically eliminating the parent voice. The provincial parent board was dissolved effective August 31, with no explanation. The provincial demonstration school council was dissolved last June. School councils were told by the director that she would not listen to their input as there was no requirement for her to do so. Full parental public input on Bill 157, the safe schools act, never took place. And recently, only after a number of parents, boards and media outlets began pressuring the ministry to explain why only select groups were invited to give input on the elementary curriculum, were parent involvement committee chairs invited to participate. We see a trend developing here, and it concerns us.

While we are pleased to see the addition of parent involvement committees in the act, again no public input was requested on how these committees should operate and no details are provided in the bill. Reaching consensus among 72 unconnected PICs is improbable at best, especially during a once-annually meeting. It feels like the old "divide and conquer" scenario all over again.

While the intent of this committee may be to provide an equitable input approach with equal considerations, it quite simply cannot when no timely or informed notice has been given to the largest group of stakeholders and voters—parents. Again, we ask, "Why?" We are the primary educators and advocates for our children; why are we being silenced?

Mr. Craig Hurst: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you. We've got about 15 seconds per side. Ms. Witmer.

Mrs. Elizabeth Witmer: Thank you very much for your presentation. Your viewpoints are very important to be heard and I look forward to going through this. It's most regrettable that the parent voice has been eliminated from providing input. When I was chair of a board, I remember setting up councils—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Witmer. Mr. Marchese.

Mr. Rosario Marchese: Thank you all. A quick question: How would we elect and/or nominate the parent trustee on the boards?

Mr. Craig Hurst: In the same nominating process as used for students.

Mr. Rosario Marchese: Would you find that process to be difficult, easy or—

Mr. Craig Hurst: I think it's straightforward, given that schools have a very good grassroots network amongst themselves within a board.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. Ms. Sandals.

Mrs. Liz Sandals: So if I understand you correctly, then, parents would be selected by school councils to be board members, as opposed to elected by the general public. Is that what you're suggesting?

Mr. Craig Hurst: That's the same process being used for student trustees, yes.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals, and thanks to you, Ms. Steel, Ms. Morell and Mr. Hurst for your deputation on behalf of the London District Catholic School Council and Parent Involvement Committee.

PEOPLE FOR EDUCATION

The Chair (Mr. Shafiq Qaadri): I invite our next presenter, Ms. Annie Kidder of the People for Education. Welcome. Please be seated and please begin.

Ms. Annie Kidder: Thank you. My printer ran out of ink so I have eight of these; that's why I was late. There might be just enough.

My name is Annie Kidder. I am the executive director of People for Education, an independent parent-led organization working in the province of Ontario. I would like to say first that overall we support Bill 177 and much of the content of Bill 177. We're very happy to see more clarity and more definition in the roles and responsibilities of school board trustees, chairs and directors. We are also happy that parent involvement committees will be legislated at the school board level and provide an essential component to support parent engagement at the regional level and school board level.

Our concerns about the bill lie, for the most part, in the regulations that are connected to the bill. We are also concerned that while the bill imposes a number of accountability measures on school boards, it provides no guarantee that the Ministry of Education will provide boards with the necessary resources to fulfil those accountability requirements.

We agree with a statement, which I won't read, in the Ontario Catholic School Trustees' Association submission that talks about how essential it is that all school boards be adequately resourced, not only to accomplish the ministry's goals but also to accomplish local goals.

I just want to go through—there are three detailed places where we have recommendations. We are very, very happy with the preamble to the bill, the suggested amendments to the Education Act. We're very happy to see such a broad visionary and inclusive description of the purpose of education that goes beyond the test score targets, class size reduction, graduation rates and public confidence, which has been, up to now, pretty well the sum of the vision for education in Ontario. This is a wonderful change and very important.

We would like to suggest two amendments to the preamble, that in parts (2) and (3) of the preamble, the term "student achievement" be replaced with the term "student success." The inference in the word "achievement" is that it is linked to test scores and narrow results rather than a broader definition of success that's actually outlined in the preamble. We'll also be very interested to see, in the new year, whether or not the provincial education funding formula is changed in order to be able to support that grand, bold purpose as described in the preamble.

Again, our concerns about the bill lie, for the most part, in the regulations. We recommend, as have others. removing the first regulation, which states, "The Lieutenant Governor in Council may make regulations governing the roles, responsibilities, powers and duties of boards, directors of education and board members, including chairs of boards." Because this section is so farreaching and could affect nearly every aspect of our school system, we do not think it belongs in a regulation. As you all know, because you do this work, regulations can be made at any time, and can be made and changed now or in the future by this government or future governments, and they do not require public input. The roles, responsibilities, powers and duties of school boards will affect all of our children and our communities, so it's imperative that the broader public be involved in creating those definitions. It's very important that this not be a regulation inside a bill.

1740

We are happy about the regulation concerning parent involvement committees, but we would like to suggest an amendment to that regulation that ensures that, as the regulation is developed concerning the roles and responsibilities of parent involvement committees, at least six months of consultation with parent communities, through PICs and the four recognized parent organizations—People for Education, the Ontario Federation of Home and School Associations, Parents partenaires en éducation and the Ontario Association of Parents in Catholic Education—that there is time to consult the parents of Ontario about the regulation. It takes a long time to consult parents; it can't be done in a matter of weeks. So we would like that part of the regulation amended.

In terms of a part of the bill that is not a regulation, under the duties of school trustees we would like to recommend removing two sections: 218.1(d), regarding the duty of a member of a board to "support the implementation of any board resolution" that is passed by the board; also, we would like to recommend removing section 218.1(e), forbidding members of the board "from interfering in the day-to-day management of the board by its officers and staff." Both clauses are too vague, too open to interpretation, and do not recognize the complexity of the role of school trustees as described in the report from the governance review committee.

We are also very concerned, though it is not in this bill, about the provincial interest regulation that is contained in Bill 78, so we would like to recommend that

Bill 177 contain an amendment to ensure full and public consultations on the provincial interest regulation contained in Bill 78. There was a very, very short consultation over the summer on those provincial interest regulations. We were very concerned about what was contained in that consultation paper. There was a huge amount of focus on judging boards based on some very narrow measures. It's a really, really important regulation. It is important that the province have an ability to intervene in school boards. They do have an interest in the educational capacity of a school board, but it's very important that everybody in Ontario gets a chance to look at that and talk about it. So I think it's imperative that we have real, open public consultations on the content of that regulation.

That is our submission.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Kidder. A minute or so per side. Mr. Marchese?

Mr. Rosario Marchese: A few quick questions: If you look at the code of conduct, if you remove the two offending things that you recommended—and I agree—what's left is "attend and participate in meetings," which is what they do; "consult with parents," which is what they're supposed to be doing; "bring concerns of parents ... to ... the board," which is presumably what they were elected to do. Then, if you remove the other two, you've got "maintain focus on student achievement"—okay—and "comply with the board's code of conduct." Do you really think that's something that you like?

Ms. Annie Kidder: I actually think the more clarity we can have about the role of a school trustee, the better. I don't disagree with having a bill that talks about the role of school trustees; I just think it's very important that we recognize the dual role of school trustees, that they are elected officials, and that they do have constituents

that they need to represent-

Mr. Rosario Marchese: Of course.

Ms. Annie Kidder: —so that muzzling them by saying that they have to—

Mr. Rosario Marchese: Absolutely.

Ms. Annie Kidder: —agree with all the recommendations of the board is difficult for us.

Mr. Rosario Marchese: Do I have time?

The Chair (Mr. Shafiq Qaadri): Yes.

Mr. Rosario Marchese: The other part that you're happy about is that all partners in the education sector have a role to play in enhancing student achievement and well-being, closing gaps in student achievement. You know student achievement connects to the EQAO, because you stated as much; you stated you wanted to change that—

The Chair (Mr. Shafiq Qaadri): I need to intervene there, Mr. Marchese, Ms. Sandals?

Mr. Rosario Marchese: —and closing the gap needs resources.

Mrs. Liz Sandals: The duties of school trustees, section 218.1(d), the notion of supporting: if that were revised somewhat so that it was more the concept of upholding the implementation, as opposed to, "Gee, you

have to pile on and be a cheerleader"—but rather that once you've made the decision, once the board has made a decision, all trustees have some responsibility to see that the implementation goes smoothly. How would you feel about that?

Ms. Annie Kidder: I still think that's splitting hairs in a way. I understand that in provincial government, there's party discipline in terms of what—if you're a minister who passes a bill, you're not supposed to go around saying you don't like it. But I think that for school trustees, who don't have parties, who don't live in that kind of world, it's a very difficult, if not impossible, thing to say to them that they should work that way.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals, To the PC side: Ms. Witmer.

Mrs. Elizabeth Witmer: Thank you very much, Ms. Kidder. Did you have an opportunity to provide input to the Ministry of Education before the bill was drafted?

Ms. Annie Kidder: I don't think so, but I can't remember. I'm not sure. I can't remember. Was there a consultation?

Interjection.

Ms. Annie Kidder: Well, we sit at the partnership table, yes. So, in that way, sitting at the partnership table—I can't remember. I'm 56. Maybe I did. Sitting at the partnership table, yes. Sorry.

Mrs. Elizabeth Witmer: All right. Well, thank you for your presentation.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Witmer. Thanks to you, Ms. Kidder, for your deputation on behalf of People for Education.

PETERBOROUGH VICTORIA NORTHUMBERLAND AND CLARINGTON CATHOLIC DISTRICT SCHOOL BOARD

The Chair (Mr. Shafiq Qaadri): I'll now invite our next presenter, Mr. Bernier of the Peterborough Victoria Northumberland and Clarington Catholic District School Board. Welcome, Mr. Bernier. We'll distribute if there are materials for us. Please begin.

Mr. David Bernier: Thank you, Mr. Chair. Much of my presentation, I'm sure, is reiterating what you've heard from everyone today, particularly OCSTA.

The Peterborough Victoria Northumberland and Clarington Catholic District School Board—and for time's sake, I'll be abbreviating that to PVNC for the rest of the presentation—trustees congratulate the Ministry of Education on the initiative Modernization of School Board Governance, and appreciate this opportunity to provide a few comments in regard to Bill 177.

The first Catholic school in our jurisdiction opened in 1852, 157 years ago. Today, we operate 32 elementary schools and six secondary schools. We have 14,678 students and 2,047 employees. The board has a budget of \$151 million and covers 10,000 square kilometres. There are 7,800 students transported daily by the Student Transportation Services of Central Ontario consortium. Our

board consists of seven elected trustees and one student trustee.

The PVNC mission statement is "to provide all students with a Catholic education that includes the knowledge, skills and values required to live a meaningful and faithfilled life."

As trustees, we govern and set policy for PVNC. We govern for the provision of curriculum, facilities, human and financial resources of PVNC and advocate for the needs of our communities. We sit on six standing committees and 21 other board committees. We are available to our electorate, parents, students, and others to address issues regarding Catholic education.

Today, we appreciate this opportunity for consultation regarding Ontario school board governance. Two of our trustees and two representatives from our district Catholic school council presented on February 18, 2009, to the governance review committee. A product of the review/consultation process has resulted in Bill 177.

Our colleagues in OCSTA have presented a comprehensive list of concerns to the committee. PVNC would like to take this time to highlight some of those that we feel most strongly about.

Given that trustees in our jurisdiction have represented Catholic ratepayers for 157 years, we request that, in your preamble, you recognize English Catholic public education as a distinct school system.

Given that our trustees have an exemplary record of governance over the past 157 years, we request that your reference in section 4 to "the Lieutenant Governor ... may make regulations governing the roles, responsibilities, power and duties" etc. be removed from Bill 177.

The provincial interest regulation consultation paper that is circulating undermines the public accountability of trustees as democratically elected officials. The degree of provincial oversight and even micromanagement that the paper suggests seems unnecessary and an intrusion into the work of our trustees and senior staff.

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Given that our trustees sit on 27 board committees, attend Catholic school council meetings, participate in monthly trustee school visits and are well networked in their respective communities, we find clause 218.1(d) regarding the duty of a member to support the implementation of any board resolution after it is passed by the board to be restrictive and mitigates against ongoing collaboration and effort to address change and improvement over time.

Our trustees agree with the governance review committee that the appropriate role of the board of trustees is in setting strategic directions, making policies and monitoring policy implementation and not becoming involved in the day-to-day operations of the board. We concur with our colleagues in the presentation from OCSTA that a more positive restating of that intention in clause 218.1(e) would be preferred.

In regard to section 218.3, "Enforcement of code of conduct," PVNC supports provincial guidance in this area. We feel, however, that Bill 177 should recognize

that PVNC and other boards retain the autonomy to adopt or add to the provincial template in order to meet local circumstances and distinctive mandates and to decide on appropriate sanctions should the code of conduct be breached.

We understand and concur that meaningful and appropriate sanctions must be available to boards in order to maintain the public trust in the event that a member is found to be in breach of the code of conduct. These sanctions must, however, be reasonable and reasonably related to the severity of the breach, and PVNC believes that trustees would exercise these powers with fairness and due diligence.

PVNC feels strongly that subsection 218.3(3), regarding the reduction of an honorarium payable to a member, exceeds our authority and that of any other publicly elected body and, therefore, recommends that that subsection be removed.

PVNC appreciates the time of the committee to present our concerns today.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bernier. About a minute and a half or so per side, beginning with Ms. Sandals.

Mrs. Liz Sandals: Yes, thank you. I'm looking towards the end of your presentation here—and just to assure you that I think the legislation does allow room for boards to blend their code of conduct with the provincial code of conduct, but I'm interested in your discussion of sanctions. You suggested the removal of "honorarium." The issue of censure and non-attendance at meetings, though—those would be things that would be reasonable tools for boards?

Mr. David Bernier: Among the trustees at PVNC, there was a general feeling that those sanctions would be reasonably acceptable.

Mrs. Liz Sandals: I know that when the governance review committee did its work, one of the concerns was that although many boards already have a code of conduct, they really had no legislative authority to enforce it.

Mr. David Bernier: Correct.

Mrs. Liz Sandals: Okay. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals. Ms. Witmer.

Mrs. Elizabeth Witmer: Thank you very much, Mr. Bernier, for your presentation.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Witmer, Mr. Marchese.

Mr. Rosario Marchese: Mr. Bernier, I've got to tell you, I find this whole part, the conduct of members of school boards, offensive and highly punitive, and it treats you like children. I was going to say: The idea of censuring a trustee, who only makes in some boards \$10,000 or whatever, is really silly. The censure is based on whether or not you are in breach of this code or any other code that you might develop in your own board. Imagine being censured for this kind of stuff and that you might lose your honorarium if you speak out. It's the silliest thing I've ever seen a government do. Do you not agree?

Mr. David Bernier: I agree. Personally, I feel—and in discussion with our trustees we believe that it's not a

waste of time but it's something that has been a knee-jerk reaction to something that happened that does not apply to the large majority of the boards in the province.

Mr. Rosario Marchese: And the other point, "refrain from interfering in the day-to-day management": Do you know anybody—there might be one or two—who does that on a regular basis as a trustee, that it should be a requirement?

Mr. David Bernier: I've known a few, yes.

Mr. Rosario Marchese: You've known a few. How many?

Mr. David Bernier: We only have seven.

Interjections.

Mr. Rosario Marchese: Oh, God, I can't believe it. I'm glad you found a few. Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese, and thanks to you, Mr. Bernier, for your deputation and presence here.

SOCIETY FOR QUALITY EDUCATION

The Chair (Mr. Shafiq Qaadri): I'd now call our final presenter of the day: Ms. Wilson for the Society for Quality Education. Please come forward. Welcome. We'll distribute those for you, and I'd invite you to please begin now.

Ms. Doretta Wilson: Thank you very much, Mr. Chair, members of the committee. My name is Doretta Wilson. I'm the executive director of the Society for Quality Education, a non-profit organization dedicated to the significant improvement of Canadian student learning. I'd like to thank the committee for granting me the time to address you all today.

Generally, the society is happy to see that the roles of various school board members are more clearly defined by Bill 177. However, as many of your past presenters have probably said, the "proof of the pudding" of the legislation will no doubt be in the regulations that will arise out of these amendments to the Education Act.

After the financial market meltdown a year ago, along with scandals in both private and public sectors—Enron and eHealth both come to mind—the spotlight on poor oversight made the call for more accountability and transparency ring loud and clear. Tightened-up financial and stock market regulations along with closer scrutiny of corporate governance surrounding stock-market-traded corporations naturally called for similar guidelines around our public institutions. School board spending scandals and dysfunctional school board trustees put a lens on what brings us here today. More than ever before, tapped-out taxpayers are looking for value for money.

School board governance should be modelled on good corporate governance. The board of trustees should set policy, give financial direction and hire and monitor a director of education to carry out their vision under the parameters they set. They have a careful balancing act, however, to shoulder for the good of the whole board and for their local constituents at the same time. Trustees, we agree, should not micromanage schools, and yes, Mr.

Marchese, we know of a few who probably do and shouldn't do it.

Mr. Rosario Marchese: So you shouldn't elect them.

Ms. Doretta Wilson: That's right.

The director should be answerable to the board, not the other way around. Too many times we see a case of the tail wagging the dog, where trustees are left in the dark and school board employees are running more of the show than they should.

The SQE would like to see better training of directors of education. Considering that some Ontario boards have multi-billion-dollar budgets, we recommend that our business schools offer an MBA degree specifically for education CEO personnel. We also recommend that school boards be allowed to hire directors who have proven corporate expertise outside of the usual education bureaucracy job track.

We're happy to see that school boards will finally be responsible for student achievement, and this almost should go without saying, but it's nice to see that it's finally being encoded. However, if the school board has primary accountability for achievement, does this mean that the Ministry of Education will be off the hook for poor achievement? For example, it's through its regulatory power that the Ministry of Education dictates to schools what kind of learning-to-read programs they use. It is the ministry that sets the Trillium list—the list of approved materials and texts that boards and schools may choose from. Over 50 years of reading research shows that to teach beginning reading using explicit systematic phonics is the best method of preventing reading failure, yet not one systematic phonics program is on the Trillium list. SOE recommends that school boards should be allowed, in regulation, more freedom to choose effective instruction for their students if the board is to be ultimately accountable for the same.

SQE is a strong supporter of local decision-making. We know that parental school choice is a good incentive to drive school improvement. We're concerned that Bill 177 is a move away from local democracy towards more centralization of power within the Ministry of Education. Many more questions remain that we don't have enough time today to explore: Will school boards ultimately become irrelevant? Is this a move towards a school district model similar to the LHIN model of heath care delivery? We don't have enough time to answer those questions, but I think that's something the committee might want to think about.

Finally, SQE recommends that school boards should be required to provide more transparent public reporting of all types of school board data—dropout rates, graduation rates, post-secondary destinations of students, and success rates of students who do choose post-secondary education, to name a few. Graduation rates become meaningless when we have no-fail policies in place. Concise information of how successful our students actually are is necessary to know whether we are getting value for money. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thanks very much. We have about two minutes or so, perhaps, per side, beginning with Ms. Witmer.

Mrs. Elizabeth Witmer: Thank you very much, Ms. Wilson, for the presentation. You talk here about the fact that we have graduation rates becoming meaningless when we have these no-fail policies in place. Do you want to expand on that? I think that has been a concern that I've certainly heard a little bit of dialogue on.

Ms. Doretta Wilson: Yes. We're concerned about that too. I know the current government's goal is to improve graduation rates, and that's an admirable goal. We would all like that, but what do they actually mean? If there is no consequence for actual achievement, then we're just really moving bodies through the school system. Universities and post-secondary institutions are already concerned about the quality of graduates who are entering their institutions. They have to provide considerably more resources towards remediation and preparation of students for the rigours of post-secondary courses. I think that that's a concern.

Mrs. Elizabeth Witmer: I would agree with you. Recently, I did put out a press release about the universities providing remedial math programs as students are not prepared for math, science, engineering etc. I was surprised at the feedback I got from parents and students, who agreed.

Ms. Doretta Wilson: We don't really know what the graduation rates are. I don't know where we get the numbers from. I've often asked ministry people, "Where are you getting these numbers from?" and nobody really knows. So it's about time we started requiring school boards to actually report proper statistics on these items.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Witmer. Mr. Marchese.

Mr. Rosario Marchese: Thank you, Doretta. You talked about financial market meltdowns and you mentioned Enron. As you know, the recent scandal in the US, where they bundled derivatives in such a way that nobody could understand—they literally brought all economies to their knees, these good corporate organizers. And then—

Ms. Doretta Wilson: I didn't say they were good; I just said that good governance was probably not there.

Mr. Rosario Marchese: But that's the point. Then you say in your statement here, "Good board governance should be modelled on good corporate governance."

What does that mean, given what you just said? You want to model it on that kind of fiasco?

Ms. Doretta Wilson: No, on good corporate governance. There's the difference. There's bad corporate governance and good—

Mr. Rosario Marchese: Oh, I see. So there's good corporate governance and there's bad.

Ms. Doretta Wilson: Good governance is good.

Mr. Rosario Marchese: So we should model it on good governance wherever we can find it?

Ms. Doretta Wilson: Yes.

Mr. Rosario Marchese: Right. Okay. I just wanted to clear that up.

Then you said that often, in response to the idea of trustees interfering in the day-to-day, they're kept in the dark, which doesn't speak to what I was saying, and that is that there may be some people who actually interfere on a day-to-day basis, although I've never met, in the Toronto board, when I was there for eight years on a full-time basis, making \$7,000—I've never met too many doing that kind of stuff. Maybe there are.

While I said that, you said, "Yes, they do interfere," and then in your statement you said, "Some of the trustees," or many of them, "are kept in the dark." Is that—

The Chair (Mr. Shafiq Qaadri): I'll need to intervene there, Mr. Marchese. To Ms. Sandals.

Mr. Rosario Marchese: Which one-

Mrs. Liz Sandals: Go ahead and answer the question.

Ms. Doretta Wilson: Sorry. I thought I was pressed for time. In many cases, trustees are not always given access to all the information they require to make the proper decisions.

Mr. Rosario Marchese: That's true. I agree with that, absolutely, which is a different statement, and I agree with that.

Ms. Doretta Wilson: That's what I meant.

Mr. Rosario Marchese: Okav.

Mrs. Liz Sandals: That's fine, thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. Thank you, Ms. Sandals, and thanks to you, Ms. Wilson, for your deputation on behalf of the Society for Quality Education.

If there's no further business before the committee, on a note of good governance, committee is adjourned until 3:30 tomorrow.

The committee adjourned at 1758.

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First Session, 39th Parliament

Official Report of Debates (Hansard)

Tuesday 27 October 2009

Standing Committee on Social Policy

Student Achievement and School Board Governance Act, 2009

Assemblée législative de l'Ontario

Première session, 39^e législature

Journal des débats (Hansard)

Mardi 27 octobre 2009

Comité permanent de la politique sociale

Loi de 2009 sur le rendement des élèves et la gouvernance des conseils scolaires

Chair: Shafiq Qaadri Clerk: Katch Koch Président : Shafiq Qaadri Greffier : Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Tuesday 27 October 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Mardi 27 octobre 2009

The committee met at 1556 in committee room 1.

STUDENT ACHIEVEMENT AND SCHOOL BOARD GOVERNANCE ACT, 2009

LOI DE 2009 SUR LE RENDEMENT DES ÉLÈVES ET LA GOUVERNANCE DES CONSEILS SCOLAIRES

Consideration of Bill 177, An Act to amend the Education Act with respect to student achievement, school board governance and certain other matters / Projet de loi 177, Loi modifiant la Loi sur l'éducation en ce qui concerne le rendement des élèves, la gouvernance des conseils scolaires et d'autres questions.

CASSIE BELL

Le Président (M. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la politique sociale. As you know, we're here to consider Bill 177, An Act to amend the Education Act with respect to student achievement, school board governance and certain other matters.

Just very quickly, procedurally, each presenter, group or individual will have 10 minutes, which, as I say, will be enforced with military precision. Our first presenter is Cassie Bell. Any time remaining within those 10 minutes will of course be distributed evenly amongst the parties.

Nous avons aussi des présentateurs bilingues ou en français aujourd'hui, which means we have some French presenters as well. Channel 2 French, channel 1 English.

I would invite Ms. Bell to please begin now.

Ms. Cassie Bell: Good afternoon. Bonjour, mesdames et messieurs. I'm here to speak as a parent of four children, three of whom are currently in the Toronto public school system—public, of course—and one who has graduated who is thinking about next steps.

Here's how I've broken down Bill 177 as I see it pertaining to children, parents and school communities—hopefully, a somewhat helpful perspective for you as the decision-makers.

- (1) Local democracy: Democracy is messy and time-consuming, so why bother with it?
 - (2) Student success: What is that?

- (3) Governance, curriculum and funding: What else is there?
- (1) Local democracy: When my youngest son was six, he was approached by a pedophile in his school in an empty corridor while he was taking the attendance to the office. Fortunately, he didn't take the candy he was offered, but he ran.

During that time, the TDSB was being supervised by Paul Christie, sent in on behalf of the Conservative government to make the tough choices the board refused to make. A board under supervision meant that trustees were suspended from power and the public had no formal access to them, nor to their advocacy. It also meant that my child had no voice. There was no one to tell his story and advocate for change, and no one to empower my voice as a parent.

Recommendations: Do clarify the trustee role and please remunerate it fairly. Do support strong community processes that are inclusive and transparent to ensure all voices are being heard. Do improve and strengthen, please, communication between trustees and board staff, but do not diminish or censor the trustee voice at the very real risk of further erosion of local democracy and the public education system. Do consider the role of an ombudsperson, which many levels of government and organizations use effectively, to highlight systemic challenges and oversights, provide transparency, ensure efficient operations and provide objective and informative feedback to those running the organization.

(2) Student success: Just what is student success? As the parent of four very unique children—and I'm sure we can all claim that; I don't necessarily mean that in a totally positive way—I can't imagine trying to come up with one definition of "success" that fits all of them. Two are girls; two are boys. One is a strong arts student; the other is a math and science whiz. One struggles with some learning issues and one struggles with adolescence. Okay, they all struggle with adolescence, including me, but are they successful? They may be, but it depends on how you define "success."

Bill 177 has not defined student success, and that is a big problem. I believe the reason it is not defined is because not everyone can agree, which I completely sympathize with. It's not easy to designate one student a success and another child unsuccessful or to decide what counts in success, and what doesn't. Does a child with a mental health issue who makes it to school four out of five days count as successful or unsuccessful? What

about a poor child who is hungry and can't focus to learn to read but doesn't act out in class? Is he unsuccessful because he has difficulty learning or is he successful for his good behaviour? What about the child whose family has been ravaged by domestic abuse, living in shelters, has moved schools three times in one year and who, slightly distracted, does very poorly on her grade 3 EQAO assessment? Is she successful for just being there or is she unsuccessful for her results?

Success must be seen within the context of the whole child—and the family and community in which that child lives—as well as their attendance, engagement at school, academic improvement over time and resilience to face challenges. In many jurisdictions, standardized testing is seen as extremely limited and merely one facet of assessment, while a holistic pedagogic process—high expectations for every child, wraparound school supports, a rich real-life curriculum, randomized assessments and assessments which look at baselines and improvement over time—is much more realistic and supports students in becoming engaged, critical-thinking citizens who love to learn. Now, that's success.

Recommendations: Do not use EQAO test results as the definition of student success. Do explore and expand the meaning of success within the context of the whole child. Do not hold a school board accountable for delivering something that cannot be defined or adequately funded within this model, which leads me to my last point: governance, curriculum and funding.

Since the 1990s, education in Toronto has struggled. My children began school in the mid-1990s, and the changes have been astounding. Political agendas have meant that schools have closed and programs and inschool supports have been cut. The number of children living in poverty has risen dramatically.

Society has grown increasingly complex, but seemingly, the education dialogue has narrowed. It has been simplified down to funding formulae, school capacity, declining enrolment—thus driving funding down, down, down-student success etc. No wonder some of our kids look at us in disbelief: "Is this really what you adults talk about?" No wonder they shake their heads and just let us talk amongst ourselves. But if we were to ask them, their parents and their communities, "What do you think the role of public schools should be today?" I think the answers might astound us. Students are not widgets; they are real people who live in the real world with real problems and struggles. We are doing them an injustice by ignoring this. Kids live in families and families live in communities. Each child, each family and each community is unique, with unique challenges and strengths.

If supports and services for kids in families and communities were structured, funded and delivered within a full-service school model designed to meet unique local needs and funded not only by the Ministry of Education but other relevant ministries as well—health, children and youth services, community and social services etc.—what would happen? Imagine a school with a family health clinic or a mental health agency office. Imagine a

school with a full-service community restaurant and community garden where students learn to cook, plan menus, grow vegetables etc. Imagine a school with a seniors' program running daily. Do the seniors then join the kids for lunch at the restaurant? Imagine a school with a government office co-located in the building, where students walk down the hall to do a co-op and local community members are employed.

The possibilities are endless, but this takes vision and big-picture thinking, not narrow, prescriptive legislation better suited for 100 years ago. Educators want nothing more than to teach and parents want all their kids to succeed. Students want to learn too. But in today's world, they're realizing that most children need more than a desk, a book and a warm body to teach them to learn and be successful.

Recommendations: Do not set priorities and demand accountability from school boards for things over which they have little or no control. Do understand that currently the Ministry of Education has authority over governance, curriculum and funding, and therefore when it considers legislation such as Bill 177 and the mandates contained within it, it also has the responsibility to fund those mandates adequately and that parents, in turn, will hold them accountable to do so.

Finally, do consider developing—and I speak to all three parties here—bold visionary policy which looks at the whole child, their unique needs, those of their family and community and integrating services and supports to meet those needs in order to help our kids to truly be successful.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Bell. About 30 seconds a side, beginning with the Conservative caucus. Ms. Jones?

Ms. Sylvia Jones: Just very briefly: Are there parts of Bill 177 that you want to keep?

Ms. Cassie Bell: I think the part clarifying the roles of the trustees is useful, but just to look at the parts that are worth keeping without deconstructing the whole thing and looking at the other things I've spoken about—if you start with success and define it the way it's been defined in that bill, we're in big trouble—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones. Mr. Marchese?

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Mr. Rosario Marchese: Thank you, Cassie. You said so much and it's so hard. The conduct of members of school boards: I find some stuff really silly, where they say you've got to attend meetings, you've got to consult with parents and bring concerns of parents to the board. The other dangerous part in terms of diminishment of their role is to "support the implementation of any board resolution" and "refrain from interfering." What do you think about that?

Ms. Cassie Bell: I think one thing: You have to remunerate trustees properly so they can consult with their communities. Second, I think, the trustees stand mostly—it is tricky—but for my child and my community.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. Mrs. Sandals.

Mrs. Liz Sandals: Yes, I just wanted to reflect: You had a series of things you'd like to imagine. In my community I can imagine a school that was actually closed. The kids were moved to the neighbouring school. There is now an amazing community hub there. It has a whole lot of different social services for the community, so it really is a hub. In fairness to the Premier, that was set up when they were there; it will be set up after this—

The Chair (Mr. Shafiq Qaadri): I'll need to intervene there, Mrs. Sandals; thanks to you. Thanks as well to you, Ms. Bell, for your presence and deputation here.

WENDY GUNN

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Ms. Wendy Gunn. Your materials, Ms. Gunn, are being distributed as we speak. I would invite you to please begin now.

Ms. Wendy Gunn: Hello. My name is Wendy Gunn and I'm a parent of two boys who received their education in Oakville through the public education system. I'm a past member of the Halton District School Board SEAC, and I presently serve on two school councils.

I want to make it quite clear before I start my delegation that I am pleased with the education my boys have received so far. I am not a disgruntled parent who is focused only on my children. Actually, as I watch the deterioration in the quality of education at our publicly funded local neighbourhood school, my concerns are more for my neighbours' children. I am a concerned citizen with a strong sense of right and wrong and a great belief in fair and equitable education opportunity, which truly is the Canadian way. I would like to see the taxpayers well served by a Ministry of Education that can get local school boards back on track when they lose their way, such as the Halton District School Board, my school board, which clearly has lost its way. I must add that it is difficult for me to encapsulate two years of frustration into a 10-minute talk.

In a perfect world the quality of education would continue to improve. We all know that the world is not perfect, so I am here today to ask for your help to fix a problem that is negatively impacting the education of so many of my neighbours' children. I am a passionate person, and I apologize if any of you have trouble following the details of what I will present. I have included a package with more details and ask that you please take the time to read it. I would be pleased to answer any questions you have. I am honest person and have no political agenda beyond the continuation of the Ontarian way: fair, equitable, and educational opportunities for all the children that our boards serve, not special treatment for a few.

Put quite simply, the problem in Oakville is the failure to share buildings. Yes, that is correct. Many parents who have their children in an optional program believe their children have the right to school buildings for their exclusive use. They believe their children should not learn side-by-side with their neighbours. Our local school board has refused to entertain ideas on how to keep the mandated programs healthy. They have also failed to put mandated programs first. They are streaming the most able students away from everyone else at a time when the research does not support this approach. We need a Minister of Education who insists that optional programs cannot become the priority at the cost of the mandated programs.

In Oakville this has become the case. Many of my neighbours have to put their children in private schools to receive a good-quality education since they have lost faith in the public education system. I would like all children to have the same opportunity for the high quality of education that my own children were so fortunate to receive. In Oakville, at our neighbourhood school, the delivery of education is deteriorating, not improving, and the proof of this is very evident in our EQAO scores. In fact, my son's Grade 3 EQAO scores were the second highest in our board just five years ago, the results of which were just published. That same school is second from the bottom. This is why I am concerned.

Thank you for the opportunity to delegate today. My delegation is filled with concrete, real-life community and parent-based concerns which lead me to believe that Bill 177 should be adopted.

Single-track French immersion education exists in Oakville, a different delivery model from the rest of the Halton District School Board, which is dual-track. In Oakville, there are five stand-alone schools which have been captured for this optional program. Approximately 3,000 students are receiving this "preferred" model of education, and some parents even boast that their children are receiving a private education on public dollars. Some parents of the French immersion students think that the English stream program is inferior.

The FI program has existed for some 20 years or more, and the truth is that due to the delivery model in Oakville, the English-track students in their neighbourhood schools have paid a heavy price. The HDSB's primary focus is supposed to be on mandated programs; however, these days, it is profiting from the over-enrolment of an optional program delivered through a model that is completely unproven. The focus of the HDSB is, without a doubt, delivery of a weak, partial, 50-50 immersion model that has the side effect of denying English-stream students a quality education.

This French immersion program has little or nothing to do with becoming proficiently bilingual in French, but more about excluding children with learning disabilities and new Canadians from the neighbourhoods. There is less diversity within these specialty schools, which leads to social segregation. The HDSB refuses to control the enrolment of this program and therefore, the negative consequences of this controversial, falsely advertised program are enormous.

The HDSB also refuses to give protection to the English track of the dual-track schools in Burlington,

Georgetown, Acton and Milton. Many dual-track schools in these areas are adversely affected, with less than 10% English-track students in the primary grades. For this academic year alone, one dual-track school in Burlington has 100% enrolment in the French immersion side in grade 1. How can this be called dual track when there's no equitably supported English track in each grade?

Brand new, \$12-million schools built in newly established neighbourhoods are being hijacked for this optional program. Throughout Oakville, neighbourhood children are being bused out of their own neighbourhood each and every day to attend an English-track school, while other children are bused in. They are housed in other neighbourhoods, skewing the student populations by sex, special needs and English-language learners. Why is this segregation being supported by this ministry that claims equality for all?

I have personally taken time away from my family to attend many HDSB meetings during the past two years. Over and over again, I hear how millions upon millions of dollars have been spent and motioned to be spent for many years to come that will continue to support single-track French immersion programming, its costly transportation provisions, and will further reduce dual-track schools into more single-track schools by refusing to cap the optional program enrolment. We are reducing neighbourhood schools throughout Halton in favour of separating the supposed elite from the mainstream students.

Take a look at the EQAO scores. It is like comparing apples to oranges. French immersion schools always take the top spots because they are a naturally streamed program. These schools do not have the distractions in their classes that the neighbourhood English-track schools have, where a distraction means 60% boys, 10 times more special education students per class and more English-language learners throughout the school.

The results are that the English-track schools continue to underpeform in desirable EQAO scores while the STFI schools remarkably continue to climb. In many cases, the students who withdraw from FI programs or are streamed out in their elementary years, typically grades 3 and 6 before the testing, return to their neighbourhood English-track school academically behind their peers. The difficult task of bringing these students up to standard is left to the poorly resourced staff at the English-track schools, which further reduces our EQAO scores while boosting the FI scores. Please note that the EQAO scores are not an accurate reflection of the spread of students' abilities within Oakville schools and throughout Halton.

When you take a snapshot of many classrooms in an elementary junior or intermediate grade in Oakville, you don't get a pretty picture: 28 to 30 children in a class, disproportionate numbers of boys, many students with IEPs, many who haven't been identified yet. Some have learning disabilities and behavioural issues, and no EA to assist in the classroom. How can you expect the average student in a class like that to be able to learn the curriculum when all of these factors are undermining

their potential and impeding the teacher's ability to be successful?

What happens in a class like that? Well, there are many repeat customers in the principal's office, and the rest of the students are stressed, unhappy and unable to get any work done. Their quality of education has been severely affected and they will be forever burdened by these unacceptable circumstances. The Ministry of Education needs to take responsibility for these rogue boards who, because of self-governance, don't think they need to be accountable for the millions of taxpayer dollars they are spending, and for all of the violations of the Human Rights Code.

The HDSB is paying for full transportation for all of the single-track immersion students to get to their schools, even though the HDSB is in a transportation deficit, and yet, HDSB does not provide transportation to several hundred at-risk secondary students by providing them with transit tickets. How could the HDSB deny these young teenagers the support that they deserve with transit tickets or even free transportation? Because it's going to elementary optional programs. How does this go unchecked?

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Mr. McGuinty wants to be known as the education Premier? I think not—not while students in the English track within an English board are being stripped of their rights to a sound education. Our children deserve better than that. As Canadians, we should all be entitled to learn French through a better delivery model. Core French hasn't been changed in 30 or more years, and the model is boring and antiquated. We have asked for core French to start in grade 1. We have asked for an accelerated integrated model or AIM program to be used in core French. How long do we as parents have to wait for our children to have fair and equal access to French? How long do we have to wait for French to be delivered in a format that is inclusive and that will not divide our neighbourhoods?

What is needed here is an education ombudsman in each and every school board in the province to ensure that monies directed to mandated programs, core English, special education and core French are being used for that purpose. We need accountability at our boards rather than single-minded trustees choosing segregation over sound education for all.

Ms. Wynne, please open your eyes. This is all taking place on your watch and our dollar. Many community members have been bringing this to your attention for nearly two years. To date, the ministry has turned a blind eye, leaving our board and trustees to be their own watchdog, and has ignored our delegations. The quality of education our children are receiving is being severely affected simply by offering an optional—

The Chair (Mr. Shafiq Qaadri): I'll need to intervene there, Ms. Gunn. The 10 minutes have now elapsed. I'd like to thank you for your presence, your deputation and the written materials that you have submitted.

NOVALEA JARVIS

The Chair (Mr. Shafiq Qaadri): I would now, on behalf of the committee, call our next presenter, Ms. Novalea Jarvis, to please come forward. You've seen the protocol. I invite you to begin now.

Ms. Novalea Jarvis: Hello. I'm Novalea Jarvis. I'm the mother of four children aged 11 to 16 years of age. My children have attended both Catholic and public elementary and high schools in Halton and outside of Halton. I have children who are gifted, mainstream and who have special education requirements. My husband and I have been on school councils for the elementary school and the high school in our neighbourhood and on a home and school. We've been coaches and trainers for hockey, soccer, field hockey and softball, and I've been a Girl Guide leader. My husband has been on DARE and various community safety committees. We are committed to our children, our school and our community. We believe that it takes a village to raise a child.

While we are definitively in favour of the ministry regulating the behaviour of school boards and devising a code of conduct, we're not sure that the indicators you've defined in the consultation paper will regulate the behaviour of school boards for the benefit of the children.

I've given you nine recommendations. I've recommended that there be an education ombudsman; better pay for trustees; change of indicators, including evaluations by school council—and that's on pages 5 to 9—of the functioning of the board; equality and special education indicators; diversity indicator; stability indicator—page 5 to 9—more accountability to parents; and a code of conduct for trustees, directors and board with significant consequences.

I would now like to tell you what we believe is important as parents, why we became school council members and why we have made the recommendations we have in this presentation.

In 2003, the board indicated to parents at my school, Pilgrim Wood, that the school would be taken over and made into a single-track French immersion school and that the children representing 85% to 90%, over 400 children, would be bused or walked out of their neighbourhood school. Luckily, government changes made the board reconsider this position.

In March 2008, the board again decided to take over Pilgrim Wood and our ward trustee asked that the classes at our school be arranged based on the postal codes of the children. There was no trustee motion to this effect and no public consultation. Our school was still at 85% to 90% capacity. I joined the school council, a council set up in June as opposed to September-October 2007 because the principal refused to call an election. The principal then also refused to advise parents of council meetings or post council meetings, even after this council was acclaimed.

This school council and the next school council for our school made several recommendations supported by a majority vote to the board in writing over one and a half years. No written response was ever received from the board to these school council recommendations, in violation of the Education Act and its regulations. Communications by the school council with the parents and guardians of the school were interfered with. A survey prepared to solicit the opinion of our parents, which school councils again are mandated by the Education Act to do, was shredded by the school administration. The superintendent sent a note home to parents advising them to stop gossiping on the blacktop about the principal.

In April 2008, a replacement principal and VP were sent to our school, but it was too late; 17 teachers and staff and five education assistants were leaving our school, some who had been there over 15 years. Our children were devastated. We were devastated as parents. The board then made a boundary change without any consultation with the school and over 100 students left to attend a new school. These children should have been given the option to stay, given that these students had attended our school for years. Again, our children cried.

Other wards were encountering similar issues with this board. The ministry-appointed facilitator, Mr. Dave Cooke, concluded in his report that that accommodation review for this other ward within our board had major flaws from the beginning, and that the local trustees' intervention resulted in some members of the community feeling concerned. He said that the decision-making process followed by the board was not transparent and confused the community, that it lacked transparency, that it fell short and that the board failed to adhere to its board-approved policy. He indicated the board needs to understand that public education is a partnership with the parents and the community, that this partnership needs to be nurtured and respected and that the board cannot violate its own policy for strategic reasons.

Because the board chose not to have a PARC in our situation, we did not have the protection of the PARC policy. We did get an independent facilitator, who recommended that the French immersion program in Oakville be delivered in a dual-track school in all the schools in our ward, as did a board research department report. We are the only ward in Halton with single-track French immersion schools, which offer French immersion on the basis that 50% of the day's instruction is in French, so they take French in gym, art, music and social studies; the other 50% is in English, from grade 1 to grade 8.

The independent facilitator's report and the board research report were largely ignored. We wrote letters, we completed forms sent to us by the board, and we delegated. The board reduced the time we had to complete forms sent to us by the board. They tried not to let repeat delegations delegate. They wouldn't let us submit more than six minutes of written presentation as opposed to 10 minutes, which was in the delegation bylaw. They advised us that we could only delegate if our issue was specifically related to an agenda item, yet some French immersion supporters received individual audiences with the trustees for extended periods. We struggled on.

We made wonderful recommendations. We asked for AIM; we were denied. We offered to share our school and make it a dual-track school, but advised the board that we did not agree to the takeover of our school and the busing out of the neighbourhood children. The board reported concerns that the parents at our school were hostile.

The board trustees continued to advise parents that the single-track French immersion program was the best program, yet it's unproven. "It's better than the Englishtrack program," they say. Both they and/or board staff personally meet with every JK and SK parent throughout Halton and tell them the same thing. Yet the board has refused to conduct proficiency testing, and there is no data to suggest that the French immersion children attain any semblance of proficiency or that the French immersion program is successful. In all the years that I attended our school, only once did the board do a presentation for special education parents, and it was at the repeated request of school council.

We brought to the board and the minister's attention that the French immersion program was having a detrimental discriminatory effect on boys, ELL and special education students, particularly in single-track, noting EQAO data showing that these schools had 40% boys, 0% ELL and less than 2% special education, greatly below board and province-wide stats. The board appears to have ignored this data, and to date hasn't provided statistical data or reviewed their own data to dispute this.

Children being pushed out of the French immersion program at the single-track and the dual-track schools arrive at our school or their home school typically in grades 2, 3, 5 or 6, forever psychologically scarred and lagging academically. They need assistance. They score low on EQAO testing; they bring down our schools' EQAO average, making our schools' less desirable. No extra help is provided in terms of EAs or SERTs. Many are later identified as learning-disabled when, in fact, they would have been fine if they'd been given the proper supports in the French immersion program.

Then in June 2009, the board decided to investigate our school council but wouldn't tell us what the complaint was or who had made it and wouldn't let us bring anyone to the interrogation. They also wouldn't tell us who was interviewed. All this is contrary to the rules of natural justice and their own policies on relationships. We requested this information and never received it to date.

The board then wrote a scathing report, which they presented publicly to the school community in the middle of our elections, without permitting school council to comment on it. When the school council members later presented to the board information and documents showing that the assertions in their report were made negligently and were wrong, the board reviewed their own actions and concluded that everything was fine—no retraction, no apology.

Our community has lost confidence in this board. We've lost confidence in the minister, who fails to

intervene on our behalf time and time again, citing they have no power to intervene. We're at a point where we're considering placing our children in private schools. I think that until you've come up against a board such as ours, you can't understand the need for governance policy. Parents want stability. They want equality. They want their children to attend walk-to neighbourhood schools. They want to be treated as partners in education. They want to be respected, treated fairly and heard. They need someone to intervene on their behalf, not just when another trustee requests it, but when parents request it. When the board is doing what it's doing, in violation of the Education Act, its regulations, the board policies and procedures or the Canadian Charter of Rights and Freedoms or the Human Rights Code, we need a mandated education ombudsman for each board, who is separate and apart from the board. We require a code of conduct be put in place for trustees, boards, directors and superintendents, and we need it now.

We want boards to be accountable to the public, to the parents. We want money spent on the children, not the yearly board expenditures of \$1.7 million on portable relocation, \$1.8 million on transportation for French immersion programs, \$500,000 on credit cards for children, \$500,000 for new templates when we have existing ones. \$125,000 to run a committee when all the other committees are volunteer or \$125,000 to pay a principal. We want money better spent on all children—on curriculum, education assistants, technology and SERTs. We want money spent to improve the regular English-track schools and classrooms. Then, possibly, there will be fewer children suspended or expelled, or not meeting the level 3 EQAO. We want a better core French program that will lead to proficiency and to bilingual students of all abilities, sexes and races.

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We want a more inclusive school environment where every child has the opportunity to attend and succeed. We want a melting pot at every school, not the dipper effect. We don't want segregated schools. We don't want schools by sex, race, ability, colour or language. Our forefathers worked long and hard on the Charter of Rights and Freedoms and the Human Rights Code to protect us from discriminatory practices. How can we allow so much discrimination and segregation in our school system under the guise of "It's a better school for that child" for reasons of obtaining federal funding or just because we can do it? What happens to those children who can't get into that school, who may never meet their soulmate or that friend who will change their lives forever? At what point will it end?

If there is a better way to teach to certain children, then bring it into the school and teach it there. Don't have separate schools and separate programs.

Thank you for listening to my presentation. I've given you a number of articles. I've summarized some of the recommendations. I've given you reasons. I've given you a list of the codes of conduct. Because of my story, it kind of explains why I put those types of codes of

conduct in. In our board, the trustees have their own website, where they go and they say that the French immersion program's a better program. One of them is on the Canadian Parents for French committee—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jarvis, for your submission and your very elaborate written materials that we have here.

CATHY DUNCAN

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter to please come forward: Ms. Cathy Duncan. Ms. Duncan, your materials are also being distributed. I would invite you to please (a) be seated and (b) begin.

Ms. Cathy Duncan: My name is Cathy Duncan. I have been a part of the Pilgrim Wood Public School community in Oakville since 1993. My husband and I chose public education for all three of our children. The two oldest are graduates of Pilgrim Wood Public School and Abbey Park High School and are both continuing their education at university. Our youngest currently attends grade 6 at Pilgrim Wood Public School.

We are committed to quality public education that is inclusive and diverse. Over the past 16 years, I have volunteered many rewarding hours to activities such as field trips, all-star reading, absence check, community outreach, and helping in the classroom and on school committees.

On March 23, 2008, my husband and I attended the Halton District School Board information meeting at Heritage Glen Public School. Representatives from the board informed us that because of overcrowding in an optional French immersion program, thriving neighbourhood schools with mandated programs in Oakville would not be a priority for the board. We were informed as a community that a "superior program" needed more space and that elementary children in the English program should be prepared over the coming school year for the transition out of their school.

I immediately called my trustee, Ms. Kathryn Bateman-Olmstead, and was told that placing children in classrooms by postal code in 2008-09 would, from her prior experience with similar situations in Oakville, ease my child's transition out of his neighbourhood school. I believed that by giving priority to an optional program for a relative few over the mandated programming, my trustee was not responsibly representing the majority of her constituents. I felt that she had a conflict of interest because her children were enrolled in the FI program. I called the ministry and was told that the school board is an elected body and that unless there was fiduciary misconduct, the ministry could not intervene. It was suggested to me that at the next election our ward could elect a different trustee and that, in the meantime, I should consider joining my school council and becoming actively involved in the school board process.

I educated myself about the current Halton District School Board and the issues affecting education in Oakville. I spoke with many people at my school, the board and the ministry. I chose to become active on my school council and participated in board activities, including focus groups, making delegations to the board and attending board meetings.

Pilgrim Wood school council was dedicated to effectively representing the Pilgrim Wood school community through a difficult public consultation process that was the focus of the Halton District School Board and seven schools in our ward during the 2008-09 school year. In addition to being a member of school council, I held the positions of chair of the nomination election committee and chair of the constitution committee for the past two councils.

At the June 8, 2009, school council meeting, Ms. P. Dyson, superintendent, publicly announced an investigation into allegations against the Pilgrim Wood school council members. Despite repeated requests by council members, the source and content of the allegations were never revealed by the board. We were told that we would be interviewed, that it would be taped and that we could not bring anyone else with us. I felt that this violated my rights to natural justice. So did other council members, and the board was advised of this. Despite this, the board proceeded with the interviews. To this date, they have not revealed what the complaint was or who made it.

Ms. Dyson presented the results of her investigation to the community at Pilgrim Wood Public School on September 15, 2009, and posted the report on the school website on September 16, despite repeated requests by the chair of Pilgrim Wood Public School council between June and September to not release the report during the school council election period. Ms. Dyson has focused much of this report on a draft constitution which she failed to attach to the report. The content and status of proposed discussion items regarding the Pilgrim Wood Public School constitution have been misrepresented in the report presented on September 15. There were no members from the constitution committee interviewed by Ms. Dyson, and the current and in-force constitution was never mentioned. This has, in effect, made the report inaccurate and misleading. I have attached a copy of a discussion paper that was presented to school council on May 4, 2009. Discussion and action on this paper was deferred prior to the board's investigation to the 2009-10 school council. At no time did Pilgrim Wood Public School have a draft constitution.

Not only was there interference in the election by the timing of the report's release, but the negative tone, inaccuracies and defamatory statements made about the school council in the content of the report interfered with the public's perception of the competency of the current council members and thus the election. While not named in the report, council members were easily identifiable by their position on council.

In the superintendent's report, it is recommended that Pilgrim Wood Public School council follow recommendations/guidelines contained in the Ontario Ministry of Education's School Councils: A Guide for Members, revised 2002. On September 25, as chair of the nomination/election committee, I requested that Pilgrim Wood school council follow the guidelines as recommended by the board report while conducting the first election in the school's history, including:

- (1) allowing seven days for the school community to become informed with respect to the election;
- (2) allowing the election committee to conduct an allcandidates meeting; and
- (3) notice of the election be sent via e-mail in addition to backpack notice.

All of the above requests were denied by the Halton District School Board. It is my opinion, as chair of the election committee, that while the procedures of the election set out by me were accurate, the outcome of the election was severely interfered with by the Halton District School Board and should be set aside.

This is the second time in two years that there has been interference in a Pilgrim Wood Public School council election or nomination process. In 2008, employees of the board attempted to recruit and/or appoint members of council without having a self-nomination process. Our school, through the intervention of a lawyer, held an election in June 2008.

As chair of the constitution committee and the nomination/election committee, I am held accountable for my actions. As a parent volunteer, I have demonstrated dedication, honesty, integrity and commitment to my child's school. How is the public to hold this board accountable for its actions, specifically programming, publicizing inaccurate statements about parent volunteers and interfering in school council elections, as well as many other issues that concern the community? Are we to just wait for the next election? I am here today to respectfully request that we implement positive changes to ensure that all school boards are held accountable to parents and to school councils in a transparent manner.

These are my recommendations:

- (1) that the ministry establish the position of an Ontario education ombudsman—one for each school board—who would focus specifically on issues related to that local school board;
- (2) the governance model should establish a substantive and enforceable code of conduct for school boards, including individual trustees and superintendents, thereby making all school board representatives accountable for their actions; and
- (3) the government should ensure that the priority for all school boards is mandated programming.

I have included a package of documents, letters and reports related to this delegation.

Thank you very much for your attention.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Duncan. We have about 40 seconds per side, beginning with Mr. Marchese.

Mr. Rosario Marchese: Novalea, can I ask you: Do you think the bill helps you in some way or other?

Ms. Novalea Jarvis: Me?

Mr. Rosario Marchese: Oh, sorry, Cathy. Do you think this bill helps you in some way to deal with some of the questions you've raised?

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Ms. Cathy Duncan: If the governance portion has some actual substance to it that would give parents an opportunity to have some—

Mr. Rosario Marchese: Because I don't think anything in the bill helps you. That's my question.

Ms. Cathy Duncan: No. I need more to it. I'm asking for more. I need more.

Mr. Rosario Marchese: I think you and the other parents have said an ombudsman would probably be one of the ways that you could get help, because I don't see how else you might be able to get help.

Ms. Cathy Duncan: That's why I'm asking for it first. That's my first request.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. Ms. Sandals?

Mrs. Liz Sandals: Yes. I wonder if you could comment on the code of conduct for trustees as presented in Bill 177. Are you in agreement with the code of conduct for trustees or do you have any additional suggestions around what should be in the code of conduct?

Ms. Cathy Duncan: I'm not a policy-maker. I'm here to ask you to please have a code of conduct for trustees that would help in situations like this. I am not a policy-maker.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals. Ms. Jones?

Ms. Sylvia Jones: Thank you, Ms. Duncan. A quick question: You make reference to an Ontario education ombudsman; do you have any idea what the skills or background—what do you envision for their background?

Ms. Cathy Duncan: I envision someone totally independent from the school board who has a—

Ms. Sylvia Jones: So, paid by the Ministry of Education?

Ms. Cathy Duncan: I would prefer to see an ombudsman who is not appointed by the school board and someone with a background in public education who could be a resource for parents who are caught—when I phone the ministry and I'm told to talk to my trustee, I have nowhere to go.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones, and thanks to you, Ms. Duncan, for your deputation and presence here today.

ELEMENTARY TEACHERS' FEDERATION OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I move now to our next presenters: Mr. Hammond, Mr. Lewis and Ms. McCaffrey of the Elementary Teachers' Federation of Ontario. Your written materials are being distributed. I'd invite you to please introduce yourselves individually for the purposes of Hansard recording and officially begin now.

Mr. Sam Hammond: Thank you. My name is Sam Hammond, and I'm the president of the Elementary Teachers' Federation of Ontario. With me are Gene Lewis, our general secretary, and Vivian McCaffrey, our government relations officer.

I welcome this opportunity to speak on behalf of our 73,000 members—teachers and education support personnel—who provide high-quality education to students in Ontario's public elementary schools.

ETFO's interest in this regulation relates to the extent to which it affects the viability of local education governance and potentially expands the capacity of the government to increase the role of provincial standardized tests in determining how and what students learn.

Bill 177 proposes to add two statements to the Education Act to clearly articulate the general purpose of Ontario's public education system. The first stated purpose, "to provide students with the opportunity to realize their potential and develop into highly skilled, knowledgeable, caring citizens who contribute to their society," is commendable. ETFO will rely on this definition to make a case for more resources to support elementary education and for less emphasis on standardized tests which narrow the focus of student learning in Ontario. Students won't realize their potential if they don't have a well-rounded, well-resourced elementary education.

The second stated purpose commits all partners in education to enhancing student achievement and wellbeing, closing gaps in student achievement and maintaining public confidence in the public education system. There is no definition of "student achievement" in Bill 177 or the Education Act. The definition of "student outcomes," which would include, we assume, student achievement, is being left to future regulations. This purpose therefore raises concerns regarding how the bill will be used to further entrench the ministry's focus on province-wide testing that, in the federation's view, skews elementary teaching too much in favour of basic skills and away from promoting a balanced curriculum and fostering a broad knowledge base, key critical thinking skills and enthusiasm for learning among our students.

Much of the bill consists of amending or adding to the current regulatory framework that governs the operation of school boards. Sections of Bill 177 do outline specific duties of for trustees, board chairs and directors of education, but ETFO is concerned with section 4 of the bill, which proposes to extend the government's extensive regulatory powers to more clearly define these roles.

Earlier this year, during the consultation conducted by the governance review committee, the Ministry of Education raised issues related to the key roles at the school board level, including whether directors of education should have dual responsibility to both the elected trustees and the Ministry of Education, and whether school trustees' responsibilities should be limited to general policy issues rather than more specific operational and program issues. Bill 177 does not answer these questions. If, through regulations, the government imposes a so-called policy model on school boards and makes directors of education directly accountable to the provincial government as well as school boards, then school boards will lose what little remaining independent authority they have.

Bill 177 proposes to add a comprehensive new section in the act, section 169.1, that specifies school board responsibilities to "promote student outcomes" and to develop multi-year plans that "include measures respecting the allocation of resources to improve student outcomes." The outcomes are to be defined in a future public interest regulation, as allowed by section 11.1 of the act. While this regulation is not yet finalized, it appears that the primary focus will be on the narrow achievement indicators measured by EQAO literacy and numeracy tests.

Since school boards no longer have the ability to raise revenue through local taxation and are totally dependent on provincial funding, they are legitimately concerned that they will be held accountable for student outcomes without having the means to address issues that may require additional financial resources or involve a broader approach to student learning. This concern is highlighted in the current context of economic restraint.

The present government insists that the power to take over a school board regarding student achievement levels will only be invoked in rare circumstances. But governments come and go, and courts rule on the language of statutes and their regulations, not the reputed intent.

Section 26 of Bill 177 adds new sections to the act to legislate terms and conditions for implementing a standardized code of conduct for school trustees. While the intent of providing a coherent framework for trustee conduct is laudable, the federation has concerns with clause 218.1(d), which obliges individual trustees not to be publicly critical of a board resolution. This provision could unfairly interfere with trustees' ability to provide a dissenting voice and fairly represent the views of their electors. Such a limitation could be seen as conflicting with trustees' rights to freedom of opinion and expression.

Bill 177 deletes all reference to co-instructional activities from the Education Act. Specifically, the bill repeals the definition of co-instructional activities and the responsibility of school boards and principals to have plans for co-instructional activities. It also deletes any reference to the withdrawal of co-instructional activities from the definition of what constitutes a strike on the part of teachers. These changes, which remove amendments to the act introduced by the previous Conservative government, reflect the philosophy that extracurricular activities provided by teachers are entirely voluntary in nature and, as such, should not be subject to governance by provincial legislation. ETFO supports these amendments to the act.

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In conclusion, given the degree to which the intent of Bill 177 will be operationalized through future regulations, it is difficult to propose specific amendments to the bill. Because of the reliance on regulatory change, Bill 177 means that potentially radical changes to school board governance could be determined outside of the more transparent and accountable legislative process. ETFO would prefer to see changes to the role and definition of school boards, trustees and directors dealt with through amendments to the act.

ETFO does not support the government's plan, through the proposed public interest regulation, to expand the government's current authority to take over supervision of a school board.

Thank you, and I would be pleased to respond to any questions.

The Chair (Mr. Shafiq Qaadri): Thirty seconds a side: Ms. Sandals.

Mrs. Liz Sandals: Thank you for your presentation. What will I say? How would you like to tell me how you would evaluate student well-being? What other things should we be looking at in terms of measuring the health of a school or a system?

Mr. Sam Hammond: In terms of how I would evaluate that with regard to Bill 177, I'd leave that up to the government, in terms of statements—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals. Ms. Witmer.

Mrs. Elizabeth Witmer: I'm just going to say thank you very much for your presentation. It's well done.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Witmer. Mr. Marchese.

Mr. Rosario Marchese: I oppose this bill completely. I think it's the most meaningless piece of—actually, it's not so meaningless. The code of conduct renders trustees useless and meaningless. The point about the purpose is that it puts you in a position to have to deal with the gap. What do you feel about your being put in a position to deal with the education gap?

Mr. Sam Hammond: The federations in this province shouldn't be put in a position to deal with that gap. One of our concerns is how that gap results from the democratic process taken away from trustees.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese, and thanks, Messieurs Hammond and Lewis and Ms. McCaffrey, for your deputation on behalf of the Elementary Teachers' Federation of Ontario.

UPPER CANADA DISTRICT SCHOOL BOARD

The Chair (Mr. Shafiq Qaadri): I now invite Mr. Greg Pietersma and colleague of the Upper Canada District School Board to please come forward. I would invite you to begin now. Do introduce yourselves, please. Go ahead.

Mr. Greg Pietersma: The Upper Canada District School Board is pleased to be given the opportunity to participate in your review of Bill 177. I am here today with director David Thomas and second vice-chair Sherri Moore-Arbour.

The Upper Canada District School Board is located in the easternmost region of the province. Our board surrounds Ottawa and encompasses such communities as Cornwall, Vankleek Hill, Rockland, Winchester, Kemptville, Brockville, Gananoque, Perth, Smiths Falls and Carleton Place. We serve 29,000 students and operate 89 schools.

At the outset, I would like to state that our board fully supports the concerns raised by our provincial organization, the Ontario Public School Boards' Association. Our board has asked me to make a presentation outlining our concerns about the proposed changes outlined in the bill.

I'm going to be very honest with you: Preparing this presentation was a struggle. I started with a point-by-point statement of our concerns, moving through the bill. Then I wrote the presentation to focus on the three areas of concern: subsection 169.1(1), clauses 283.1(1)(f) and (g) and section 253.1. This version I also put aside. None of these responses seemed to adequately articulate the concerns of my board.

As I read through the e-mails from trustees and notes from discussions, I realized that our board is very worried. They are worried that we are moving ever closer to the loss of the local voice in education. While it may not be this bill that tips the scales to effective centralized control, it may be the next.

Our longer-serving trustees have said they barely recognize the role they now have. Since the Fewer School Boards Act, these trustees have seen progressive erosion in their sphere of influence. They see the public's role increasingly marginalized, as they themselves become marginalized.

One of these long-standing trustees, Millie Craig, stated: "If the historic relationship between parents and their elected trustees is redefined so that trustees become the agents of big government, the personal relationships built on mutual respect will be altered and local partnerships will become less effective."

We are very proud of our local response to the achievement gap. Our board has embarked on an ambitious but attainable goal of having a 90% graduation rate; that is, that 90% of a cohort starting kindergarten will finish high school with their peers after four or five years of high school. In 2003, we started supporting our system with a 15-year strategic plan built on local consultation, which is broken up into three-year cycles and reviewed annually, and it is working. Wayne Hulley and Linda Dier, in their book Getting By or Getting Better, said that the Upper Canada District School Board, as a result of our multi-year plan, can "truly say that learning by all is becoming a reality in their district. They are making a difference." This is a local multi-year plan based on foundational research and adapted to suit our local conditions. We did not need a ministry template or memo to do this.

We have read with interest and concern that the ministry will require us to have multi-year plans. The ministry has a poor record when it comes to creating the conditions for multi-year plans to be effective. We managed to persevere despite the ministry arbitrarily removing \$10 million from our special education funding. Sending in-year funding that is so prescriptive to support its objectives and not ours shows no respect for our multi-year planning. Unfortunately, we see nothing in the bill or the rhetoric that suggests a change in the government's approach.

We do not mean that we don't accept the role of a centralized Minister of Education. The redistribution of funding based on something other than the local tax base has greatly increased the equity of resources. Our board accepts the value of centralized curriculum development and the operation of centralized testing.

Perhaps it is time for all of us to look at a leadership approach that moves away from a top-down hierarchical style. Perhaps we should consider something like servant leadership, which instead emphasizes collaboration, trust, empathy and the ethical use of power. The father of servant leadership, Robert K. Greenleaf, says, "The servant-leader is servant first.... It begins with the natural feeling that one wants to serve, to serve first. Then conscious choice brings one to aspire to lead. That person is sharply different from one who is a leader first, perhaps because of the need to assuage an unusual power drive or to acquire material possessions.... The leader-first and the servant-first are two extreme types." From our reading of the bill, we see a relationship based on servitude being fostered.

While we certainly think that the changes proposed by the Ontario Public School Boards' Associations will mitigate some of the concerns, we ask that you consider a deeper look at the ultimate impact of this legislation on public education. Is this a bill that will see the ministry support local public education or take it over?

The first area that we ask that you consider is a concept advanced by our native trustee, Peter Garrow: reciprocal accountability. Our board does not shy away from being accountable; however, we feel that we will be held accountable for measures that are not our creation and for which we have no ability to marshal financial resources. What is lacking in the legislation is an indication that the government accepts its role to partner with school boards to ensure that the conditions exist for us to reach the government's targets.

The second concern is about the resting of power in the ministry. It is the open-ended articles giving the minister the power to create new rules with regulation beyond the watchful eye of the Legislature that concern us most. We ask you to reflect on this continuing development in legislation. We understand that our provincial association has requested that it be consulted with on the creation of regulations. But let's be honest: There is a transparency factor to having to submit to debate on the floor of the Legislature that does not occur with regulation. Out of the public's sight, out of the public's mind; is this really the best we can do?

Thirdly, this bill does little to enhance the role of boards. Defining the role does little more than reaffirm

what was already known. Our fear is that boards, trustees and directors will become more focused on compliance, rather than on advocating and innovating to drive the local achievement agenda.

As we reviewed the bill, we began to wonder: Whose vision of public education is being represented? Is it the vision of accountants? Is it the vision of a frustrated bureaucracy? Is it written by a passionate supporter of public education? Is it written by a government concerned about being accountable for something it doesn't have complete control of? We believe it was written by all of them. While we can't figure which one of them had the lead voice, we can assure you that it wasn't the passionate supporter of education.

At this point in the history of reform in public education, we need to thrust the voices forward that have the understanding that we need to create classrooms that excite, engage and enlighten. We need the voices that comprehend the value of local and community in the success of our system. Do you hear these voices in this bill? If they are there, they are very faint.

1700

It's hard, as a trustee, to read this bill and derive a positive sense of our future. It was speculated at our table that in the near future trustees would be done away with altogether. While this may not be an accurate representation of the government's intentions, it speaks to the sense of increasing futility in our role.

In closing, I want you to know that we accept the fact that we are a creature of legislation. At any time, we could be removed. Regardless of the outcome, trustees will continue to do the best they can to support students—that you can count on. All of us are passionate champions of education.

The last thought I would like to leave you with is on whether you believe that this is the best response for children. Are more children going to learn because of this bill?

The Chair (Mr. Shafiq Qaadri): Thank you. Thirty seconds a side: Ms. Witmer.

Mrs. Elizabeth Witmer: I want to thank you very much. I'm a former board chair and I appreciate your courage. I think what you have identified to be the case is probably, regrettably, very close to the truth. I think the role of the trustee will be diminished and I'm not sure the student will achieve greater success.

Mr. Greg Pietersma: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Witmer. Mr. Marchese.

Mr. Rosario Marchese: Thank you, Greg. I think the entire focus of this bill is about the purpose, section 3, which talks about "closing gaps in student achievement," and student achievement is about tests. This is what the bill is about and this is what a trustee's role is all about, if you want to comment again on what you feel about the role you are now put into in closing the gap in student achievement.

Mr. Greg Pietersma: I find it odd that we're having to be told that that's our responsibility. Every day—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. Ms. Sandals.

Mrs. Liz Sandals: Thank you. First of all, let me assure you that nobody has any intention, at least not on our side, of getting rid of trustees.

On page 2, I think it is, you're talking about the fact that Upper Canada has a multi-year plan, but you're objecting to the ministry requirement to have a multi-year plan and I'm finding that very confusing.

Mr. Greg Pietersma: I'm sorry to confuse you. It's not that we object to having it. We object to the—

The Chair (Mr. Shafiq Qaadri): With regret, I will have to intervene. I thank you, Ms. Sandals, and I thank you, Mr. Pietersma, Ms. Moore and your colleague, for your deputation on behalf of the Upper Canada District School Board.

EDUCATION ACTION

The Chair (Mr. Shafiq Qaadri): I would now like to invite our next presenter, Mr. Christopher Glover of Education Action, to please come forward. We'll distribute those materials; you can just leave them there. Please be seated. I would invite you to please begin now.

Mr. Christopher Glover: My name's Chris Glover. I have two children in Toronto's public schools and I have been, from time to time, a parent activist on education issues.

I have two points. The first is that Bill 177 does not reflect the historical link between public education and democracy and the second is that Bill 177 undermines the democratic powers of the voters who elect our trustees.

I'm going to start with a brief historical account of the relationship between democracy and public education. Democracy comes from the Greek words "demos" and "kratos," which mean "people rule." Advocates of democracy in the early 1800s argued that if people were to govern themselves, they would need to be educated.

In Canada, we achieved our democracy step by step rather than through a revolution. By 1828, although the Legislative Assembly which we are in today had no real power, the Reformers advocating for responsible government held the majority of seats. The Reformers wanted the real power in the province to rest with the democratically elected Legislative Assembly. One of their first acts was to appoint Charles Duncombe to travel to New York to study the public education system there. In his report, he recommended the creation of a universal, free public education system similar to, but of course better, than the one in the United States.

Frustrated with the lack of progress—*Interjection*.

Mr. Christopher Glover: That was supposed to be a joke.

Interjection.

Mr. Christopher Glover: And that one's falling flat, too. Okay.

Frustrated with the lack of progress toward democracy, some Reform members of the Legislative Assembly, including William Lyon Mackenzie and Charles Duncombe, rose up in the Rebellion of 1837. The rebellion failed, but after the rebellion, the British government sent Lord Durham to investigate. To correct the situation, Durham recommended the establishment of responsible government in the Canadas. In spite of this recommendation, the British colonial government continued to resist democratic reform, but in order to avoid stirring up another rebellion, the Lieutenant Governor of Upper Canada was forced to make concessions. Among these, in 1844, was the appointment of Egerton Ryerson as chief superintendent of education, a post that he would hold until 1876. Ryerson became known as the founder of Ontario's public education system.

This is only a brief historical snippet of the link between democracy and public education but, given this crucial link, it is a severe oversight that the "purpose of education" in Bill 177 makes no mention of the relationship between public education and democracy. Other documents do make the link. The mission of the Toronto District School Board reads: "Our mission is to enable all students to reach high levels of achievement and to acquire the knowledge, skills, and values they need to become responsible members of a democratic society."

So my first recommendation to the committee is to change the "purpose of education" to read: "The purpose of public education is to provide all students with the opportunity to realize their potential and to develop into highly skilled, knowledgeable, caring citizens in our democratic society."

But just to have the words is not enough. Bill 177 must be changed so that it recognizes the sovereignty of citizens' votes. Bill 177, as it currently stands, will allow the provincial government to "make regulations governing the roles, responsibilities, powers and duties of boards, directors of education, and board members, including chairs of boards." This section of Bill 177 implies that trustees are employees of the provincial government rather than elected representatives of the citizens in their communities. The provincial government should not be writing job descriptions for trustees. The trustees are our elected representatives.

Several times over the past decade, the provincial government has seized control of boards and appointed a supervisor to run them. It could be argued that this was one elected official—the Minister of Education—usurping the powers of other elected officials, the trustees. But, for example, with the Catholic school trustees currently, they were elected by Catholic voters in Toronto. They are the elected public servants of that community. The minister's government was elected by all voters across the province and represents other interests besides the Toronto Catholic voters.

If there was an issue of illegality, it is for the judicial system to intervene. If the trustees have behaved inappropriately or against the wishes of their voters, it is for the voters to elect someone else in the next election.

I'd also like to add that I would support the expansion of the Ombudsman's powers to intervene in education issues.

I'd like to draw a parallel here. We do not expect the Stephen Harper government to step in and replace Ontario's provincial government with a supervisor because of the eHealth scandal. Nor should we expect the provincial government to unseat elected trustees and replace them with a supervisor.

My second recommendation is that section 4(2), and all other sections of Bill 177 that undermine and disrespect the democratic sovereignty of the voters who elect trustees, must be removed from Bill 177.

In Canada, we achieved our democracy step by step; we could also lose our democracy step by step. Bill 177 is a step in the wrong direction.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Glover. About a minute and a half per side, beginning with Mr. Marchese.

Mr. Rosario Marchese: Thank you for your presentation. You heard Ms. Sandals say that they're not trying to get rid of trustees, but when you look at the code of conduct, it simply says that they shall attend meetings, consult with parents—blah, blah—comply with the board's code of conduct, maintain focus on student achievement, and they have to support the implementation of any board resolution after it's passed and refrain from interfering in the day-to-day management. Once you've done that, is there anything left for trustees to do?

Mr. Christopher Glover: No. I think it's a real infringement upon the democratic process and the people who voted for the trustees. I'm really appalled with that section of the bill.

Mr. Rosario Marchese: Thank you. The other point is that People for Education, through Annie Kidder, came in and said that she supported the purpose and said, in terms of closing the gaps, that we might have to provide more resources. But she said that if we just change "student achievement" to "student success," she would be happy with that.

Mr. Christopher Glover: It's not enough. This is a question of democracy and this is a question of what it means when we go to the polls and vote for somebody. If our votes can be discounted, if somebody can usurp the power of those votes, then our democracy means nothing.

Mr. Rosario Marchese: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. Ms. Sandals?

Mrs. Liz Sandals: Just let me begin by commenting that, despite the fact that the constitutional relationship between provincial and federal governments is different than between the provincial government and school boards, in fact there is nothing in this bill or in the Education Act that would allow the Minister to unseat a trustee, because it is recognized that trustees are elected and the power to remove a trustee rests with the electorate.

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Having said that, my recollection of the Egerton Ryerson history is that part of his rationale for looking at public education as a foundation of democracy was that he believed that the public must be literate in order to participate in democracy. I'm wondering what your objective is, given the purpose of the Education Act, which actually looks at issues of student achievement and literacy.

Mr. Christopher Glover: To be educated and to be able to participate in a democracy requires a lot more than just literacy; it requires a broad education. One of the problems and one of the issues with the direction of the current provincial government is that the focus of education has become too narrowed on EQAO scores. Being able to fill in bubbles on a test card does not make you eligible to be a citizen or equip you to be a citizen in a democracy.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals. To Ms. Witmer.

Mrs. Elizabeth Witmer: I just want to thank Mr. Glover for coming forward and speaking so eloquently about the loss of democracy. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Witmer, and thanks to you, Mr. Glover, for your deputation on behalf of Education Action.

Just before I call our next presenters, I'd like to recognize on, behalf of the committee, the Gilchrist clan: Mr. Steve Gilchrist, who, as you know, was the MPP for Scarborough East from 1995 to 2003. Welcome. He is accompanied by, I presume, his father, Gordon Gilchrist, a federal member of Parliament from 1979 to 1984. We welcome you to the Legislature especially.

ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION, DISTRICT 19–PEEL

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenters, Ms. Desiree Francis and Mr. Jesse Sturgeon of the Ontario Secondary Schools Teachers' Federation, District 19—Peel. You've seen the protocol. Please be seated and begin.

Ms. Desiree Francis: Thank you for allowing us this opportunity to speak today. We will be speaking to you from two different perspectives as Peel teachers, Jesse as a teacher in the start of his career and myself as a teacher towards the end of her teaching career.

Before we start, I'd like to remind you of some words that you may recollect:

"As a citizen, I'm concerned—like you—that many of us no longer feel our participation matters.... It's a democracy ... where a government trusts its citizens.... Democracy belongs to its citizens, not just its elected officials.... We will show Ontarians that their democratic institutions serve the interests of the people, not those of any particular party.... When it comes to how the people elect their representatives, the people of Ontario will have their say.... Our responsibility is to ensure the public's voice is heard loud and clear and has an impact." By "increasing the quality of debate ... we make our democracy stronger."

Do these words sound familiar? They should. They are the words of the then newly elected Dalton McGuinty speaking at a conference on democracy in defence of democracy. The entire tenor of that speech was to speak against a growing public cynicism that governments don't listen and don't trust their electorate once elected.

Let me tell you who I am. My name is Desiree Francis, and I'm proud to call myself a veteran teacher from Peel. Though I am currently the president of the public secondary teachers in Peel, I have been a classroom teacher for 23 years.

What does this have to do with this bill? It probably seems unusual that a teacher should speak to issues that seem to be about the employer, but in truth, I feel strongly that what happens with Bill 177 will have a direct impact on all teachers and, certainly, changes as a result of regulation even more so. No bill in education of such scope impacts one group only.

Our trustees in Peel work with the Peel District School Board efficiently and successfully. They are part of school life, often visiting schools and participating in school events. They advocate for their school constituency and support parent groups. They ensure that public schools meet the diverse needs of a very multicultural Peel community. They oversee every aspect of the board, from management to employee level—not an inconsiderable responsibility given that Peel employs close to 12,000 individuals. Ensuring the smooth operation of an organization this size speaks to the existing skills and efficiencies already in place.

As the board's website proudly attests, trustees already are accountable to the public and are answerable to a code of ethics. They adhere to strict guidelines regarding their role in the board and their role as representatives of a constituency. Clearly, the current framework and practice already addresses many of the concerns presented in Bill 177.

So what's wrong with this new bill? Simply put, it's too far-reaching, tying too many areas of education together as if there was a natural link between these disparate parts—politics to school performance, finances to scores and rule-following—and threatening boards with supervisors, an unpopular and undemocratic move, which has thus far been used as an exception, not a mode of operation for the future. What confidence does this present in employee groups and the work they do, since they, too, will no doubt be held at fault if any problems occur? I assure you, this will not result in labour peace.

It just doesn't make sense, and is, in fact, evidence of unnecessary legislation. Why create a system which diminishes the role of trustees and their democratically earned right to manage the board? What other elected representative in Ontario faces such penalties without facing a court or public hearing? It just isn't reasonable.

In closing, before I leave you to my colleague, I leave you with this note: A previous government believed in creating a crisis, inventing a problem so that they could then claim to fix it. I urge this government not to proceed in like manner. While there may be ways in which our current governance model can be improved, there is no need to restructure the entire system to fix these small

areas. Continue instead your faith in democracy and support school board systems that are first and foremost about elected trustees. They will guarantee your goals of inclusion, responsiveness and accountability by being anchored in the local community.

At this point, I'd like to introduce my colleague Jesse Sturgeon.

Mr. Jesse Sturgeon: As Desiree mentioned, my name is Jesse Sturgeon. I am the political action chair for OSSTF, District 19, Peel, and an executive member of its teacher bargaining unit. More importantly, I have spent the vast majority of my 30 years as a member of the Peel learning community, first as a student and for the last three years as a teacher. I have worked tirelessly with colleagues, administrators, social workers, parents and students to provide challenging academic programs that enable students to experience authentic intellectual, emotional and social growth. It is these experiences that inform my presentation here today.

While the intent of Bill 177 may be to increase student achievement and ensure effective school board governance across the province, in practice, it has the potential to systematically undermine the efforts of the entire educational team, further sacrifice credit integrity in favour of manufactured student success and deny all stakeholders authentic democratic participation in the education system at the local level.

Ontarians have often heard the government stress that student achievement is more than just EQAO results and graduation rates. However, it is these very factors that have become synonymous with student success, both with the government and the public. Now the government would like to entrench the language of student achievement in law, without clearly defining what it looks like and how it can be measured. To embed this presently underdefined concept into the Education Act is to propagate a doctrine of pseudo-accountability, in which the focus of education becomes provincial test results and graduation rates.

The learning process will no longer serve as a means by which students develop into active members of a prosperous, caring and cohesive society. Instead, Bill 177 could pressure school boards to deliver programming that teaches to provincial tests and relaxes academic standards for fear that the ministry might invoke its provincial interest powers as outlined under section 11.1 of the Education Act.

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Furthermore, Bill 177 will serve to further centralize decision-making powers with the Ministry of Education, thus denying trustees and their constituents the ability to make decisions that best meet the specific needs of their communities. Whether intentional or not, this bill treats trustees with a sense of distrust. For many of us in Peel, such undertones are very difficult to ignore, especially at a time when our students receive significantly less per capita funding than those in neighbouring boards. As was mentioned earlier, trustees form a crucial part of our educational team. To make them more accountable than

any other elected officials while also denying them any real decision-making powers is not only unjust, but it is ultimately undemocratic.

Trustees are a vital conduit through which local stakeholders can have their concerns heard. To stifle their voices is to silence all citizens at the local level. As such, it is imperative that the government hold public consultations when drafting the policy and program memoranda that will ultimately regulate the implementation of this bill, should it receive royal assent.

The Chair (Mr. Shafiq Qaadri): We have about 20 seconds a side, beginning with the government. Ms. Sandals.

Mrs. Liz Sandals: Thank you for your presentation. You talk about it being important to give some attention to student well-being. How would you recognize that?

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals. To the PC side: Ms. Jones.

Ms. Sylvia Jones: Peel's per capita is much lower than the provincial standard. Can you please explain quickly to the committee a little more about it? Do you know the number?

Mr. Jesse Sturgeon: In all honesty, off the top of my head, no. I was talking specifically in reference to Toronto and Dufferin-Peel, which is in the same geographic—

Ms. Sylvia Jones: Oh, it's across the province.

Mr. Jesse Sturgeon: Is it?
Ms. Sylvia Jones: Absolutely.

Mr. Jesse Sturgeon: Okay. Like I said, I have tons of information—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones. Mr. Marchese.

Mr. Rosario Marchese: Yes, you won't be able to respond to my point. This bill has nothing to do with trustees or their governance. In fact, their role is subjugated into the purpose of this bill. Their role now is to deal with student achievement, and student achievement has always been defined by the government every time that they speak about tests. That's what this is about.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese, and thanks to you, Ms. Francis and Mr. Sturgeon, for your deputation on behalf of the Ontario Secondary School Teachers' Federation, District 19, Peel.

KAWARTHA PINE RIDGE DISTRICT SCHOOL BOARD

The Chair (Mr. Shafiq Qaadri): I would now invite Mr. Gordon Gilchrist, trustee of Kawartha Pine Ridge District School Board. Welcome, sir. Please be seated. If you have any written materials, we'll be happy to distribute those—which we are doing. I invite you to begin, please, now.

Mr. Gordon Gilchrist: Thank you, Mr. Chair, and thank you for your kind acknowledgement earlier.

As an active trustee of a responsible public school board, I am grateful for the opportunity to address this

important committee for the singular purpose of commenting on the student achievement aspect of Bill 177. With only 10 minutes at my disposal, I shall not attempt to deal with the governance portion of the bill, particularly when it is so well handled daily by my colleagues and my administration and so competently critiqued by the Ontario school boards' association brief—and also by the one we just heard from the Elementary Teachers' Federation of Ontario. I shall mention only those funding issues that strongly affect student achievement, the lack of which reduces a board's ability to impart higher levels of instruction and teaching and, consequently, higher student achievement.

The discussion paper issued by the Ministry of Education declares that the bill clearly articulates the goal of the act in the broadest terms: "To provide students with the opportunity to realize their potential"; and "all partners"—I emphasize "all partners"—"in the education sector have a role to play in enhancing student achievement ... closing gaps ... and maintaining confidence in the province's publicly funded education system." Bill 177, however, seems to be a one-way street, imposing downward bureaucratic control over a democratically and locally elected board. The words "all partners" seem to apply in the earlier thing, but there is much less confidence being shown in trusteeship in this bill.

Members, this is a worthy goal, well-expressed, and it calls for a broad analysis of the many gaps that exist in our educational system. Allow me to explain the increased task imposed on school boards by the bill, namely, to be responsible for student achievement and to reach the objective of having three quarters of elementary students achieve grades of 70% or more as well as have 85% of secondary students graduate. As for my school board, I know it accepts the challenge. But first some facts.

Bill 177 calls for school boards to improve student grades and control legitimate expenditures while offering no additional assistance in supplying the increased resources needed by a board in order to achieve those higher goals.

Let us consider my school board as well as the province as a whole. The invaluable EQAO testing results of grades 3 and 6 reading, writing and mathematics, on average, for the province over the past seven years reveal that the numbers of students achieving grades of 70% or higher amount to approximately two thirds, roughly 61% to 77%. My board's results closely trail the provincial average by a few per cent—minus 9% to plus 3%, with minor exceptions. So both my board and the province are operating at approximately the two-thirds level of student achievement.

The predominant amount of funding for public education goes to salaries and benefits—80%-plus; busing—for example, my board is 6%; plus other non-educational costs such as maintenance and utilities, leaving well under 10% of funds for the classroom.

Of course, teachers are an integral cost to the classroom, but their funding at any scale of wages does not relate directly to student achievement results—that is, paying teachers more does not necessarily equate to higher marks—and boards do not actually control these dollars anyway. The same for busing costs: More buses don't translate to higher marks, nor do costs of maintenance and utilities. Only that small remainder, less than 10% of its budget, may be applied by a board to satisfy its unique needs and provide the flexible application of funds to meet its proposed responsibility for better student achievement.

That small percentage is what is resulting in a twothirds standard of education in our board, and obviously the present provincial level of funding is what is resulting in the same two-thirds level of achievement across the province. Funding is not enough in either case.

Granted, it is a terrible time to be calling for more resources from the province, but the bill calls for improved results and the facts require a major increase in funding if boards are to achieve the desired results.

The goal is worthy. A well-educated society is far better able to deal with all its other problems than is a poorly educated society. That fact places education in the absolute top category of any government's obligations.

From the above-stated facts, it should be obvious that when considering all the expenditures of funds across the province aimed at covering all the demands placed on school boards for the broad educational needs of our students, the total dollars expended are producing only a two-thirds average level of achievement, right across the province. That has been consistent over the past decade in spite of myriad adjustments in rules and teaching styles. Clearly, all the gaps of the entire educational system have not been identified nor adequately addressed by our establishment partners.

It can readily be seen that additional funding for the extra needs, such as more special education teachers, enrichment programs, smaller class sizes, smart boards and other electronic techniques that will, for example, allow students to interface with their school from home while doing homework and classroom projects at their own pace and with much greater interest. All these would achieve the required higher performance called for by the ministry.

The ministry, by its mandate, is entitled to place responsibility for better student achievement results on the board, but I repeat: It must also recognize the need to provide increased funding for the many much-needed changes described, all aimed at improving student achievement.

Many good projects and directives stem from ministry initiatives and the knowledgeable people working therein. Some projects are already in process, and no doubt there are others in the works. But the following issues should be investigated and introduced or changed in order to overcome the low testing results at both board and provincial levels.

Action is already being taken by the literacy and numeracy secretariat to achieve better educational understandings with individual boards, but in order to understand and adequately fund the many other special needs of each board, teams of experts should be sent out from the ministry on a regular basis for consultations about each board's unique and operational requirements in order to better customize that board's special funding requirements.

Dramatic new teaching techniques will demand significant changes by unions and federations, which today are in fact largely influencing education to a point of slowing, if not debilitating, new and better teaching practices. Unions must recognize and accommodate the ongoing changes occurring in teaching, particularly in electronic education, which offer major improvements in the accumulation and dissemination of knowledge and are a potentially great upgrade to student achievement.

Although the large-scale utilization of electronic techniques and their potentially beneficial effect on education must be recognized and implemented at once, such techniques will not of themselves improve educational results. Good teachers—and we have many of those—will still be the backbone of good education, but substandard, unable or unwilling teachers must be retrained or removed.

Like boards of trustees, unions must accept that we both exist primarily to support student achievement, not just to sustain membership demands that often run contrary to the needs of the students we both serve. Consequently, a meaningful teacher evaluation process is needed for both the new and experienced teachers, perhaps by qualified retrainers or imposed probation conditions, or new apprenticeship programs.

The planning of both lessons and units, and their relationship to the Ontario curriculum, must be a priority for new and existing teachers.

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Boards should be allowed to exercise more classroom discipline for the safety of both student and teacher. As well, highly disruptive students should not be permitted to destroy the calm and safe environment of a well-performing classroom. Swearing, disobedience, desk throwing and other disruptive acts reduce the abilities of well-behaved students to concentrate and learn, thus impeding student achievement.

We must explore different and better techniques for teaching special-needs students. Special-needs teaching should be a requisite for every teacher as a pre-service requirement of their education.

More emphasis should be placed on greater student achievement by offering more high-standard and enriched courses like gifted programs, international baccalaureate programs, advanced placement programs and specialty high-skills major programs. My board is leading the province in specialty high-skills major programs with great success.

We should place far greater emphasis on teaching Canadian history and geography so that new immigrants and all young Canadians will better come to know and identify with their wonderful country. That, too, would be real student achievement.

The ministry should eliminate the pseudo-professional, bureaucratically imposed, overly complicated reporting system that has handicapped teachers and taken meaningful, personal, humanistic and easily read aspects out of parents' understanding of their child's real progress and their ability to help their child to improve her or his student achievement.

Finally, the largest misapplication of available educational funds is the maintenance of four different categories of publicly funded school systems. The variations and duplications of costs, including teaching and administration salaries and benefits, building costs, busing costs, communications costs and even the size of the supporting ministry bureaucracy, if eliminated, would release major amounts of funding to all classrooms, which would undoubtedly produce superior results and greater student achievement by all Ontario students.

Yes, members, it is a bad economic time to be asking for more resources. At the very least, I am also pointing to a better application of existing dollars, all dedicated

toward a higher level of student achievement.

As stated earlier, some of the above points are already being studied and implemented on various levels of scale. With ministry approvals, some of these additional items could be undertaken at the board level. Others must be dealt with by the—

The Chair (Mr. Shafiq Qaadri): I'll need to intervene there, Mr. Gilchrist, but I'd like to say thank you to you and your entourage for your presence and your written deputation.

Mr. Gordon Gilchrist: Thank you, Mr. Chair.

ASSOCIATION FRANCO-ONTARIENNE DES CONSEILS SCOLAIRES CATHOLIQUES

Le Président (M. Shafiq Qaadri): Maintenant, j'ai le plaisir d'accueillir notre prochaine délégation, M^{me} Petit-Pas et M^{me} Drouin, qui représentent l'Association franco-ontarienne des conseils scolaires catholiques. Comme vous avez vu, vous avez 10 minutes pour votre présentation. S'il vous plaît, asseyez-vous, et vous

pouvez commencer.

M^{me} Dorothée Petit-Pas: Bonjour, distingués membres du comité législatif. J'aimerais vous remercier d'accueillir l'Association franco-ontarienne des conseils scolaires catholiques afin d'aborder le projet de loi 177, Loi sur le rendement des élèves et la gouvernance des conseils scolaires. Nous espérons que notre présentation vous permettra de mieux comprendre les enjeux de ce projet de loi qui risque d'affecter à long terme la gouvernance et le développement des conseils scolaires catholiques de langue française en Ontario.

Les huit conseils scolaires catholiques de langue française de l'Ontario, représentés par l'AFOCSC, ont été créés en 1998. L'AFOCSC représente le plus grand réseau d'écoles francophones catholiques à l'extérieur du Québec. Les écoles catholiques de langue française desservent aujourd'hui au-delà de 70 000 élèves, ce qui

représente 75 % de la clientèle franco-ontarienne. Notre réseau comprend 246 écoles élémentaires et 48 écoles secondaires réparties dans toutes les régions de la province.

Réaction générale au projet de loi 177: de manière générale, le projet de loi 177 a été bien accueilli par les conseils scolaires catholiques de langue française. Nos conseillers apprécient le fait que le projet de loi soit centré sur le rendement des élèves. Nos conseils ont participé à la consultation tenue par le comité de consultation sur la gouvernance, et l'AFOCSC a déposé un mémoire avec 14 recommandations reflétant les préoccupations de nos conseils scolaires catholiques. Ce mémoire vous a été distribué à fin d'information. Je m'attarderai sur six de ces préoccupations.

On s'entend pour affirmer que certaines modifications à la Loi sur l'éducation de l'Ontario sont nécessaires et, au dire de la majorité des conseillers et des conseils scolaires, assez évidentes dans le contexte de gouvernance moderne. Les conseillères et conseillers scolaires ne concentrent pas leurs énergies à décider de la distribution des boîtes de lait, etc., et ces changements devraient être apportés à la loi. Cependant, il est d'intérêt pour tous les conseillers de s'intéresser aux modifications qui pourraient affecter le niveau de responsabilité assumé par le ministère, ainsi que celui qui sera assumé par les conseillères et conseillers scolaires.

Certains des 72 conseils scolaires de l'Ontario ont catégoriquement refusé de répondre à la consultation sur la modernisation de la gouvernance, parce qu'on jugeait qu'il s'agissait d'une initiative visant une prise de contrôle par l'appareil gouvernemental. La vigilance est de mise, et les questions soulevées par ces conseils sont valables. Pourquoi ajouter ces mesures de contrôle alors que les élections servent à juger de la compétence et de la performance des élus? Les députés ne sont pas soumis à ce genre d'exercice et ne doivent pas passer par toutes sortes d'examens pour faire la preuve de leur pertinence. Les électeurs se chargent de cette tâche au jour de scrutin.

Voici maintenant les six enjeux.

(1) Les conseillères et conseillers scolaires doivent veiller à préserver leur autonomie de gestion. Il faut laisser aux conseils l'autonomie qui leur revient. Plusieurs craignent que le projet de loi sert, au bout du compte, à restreindre les pouvoirs des conseillers scolaires et à augmenter le niveau d'intervention du ministère de l'Éducation. Chaque conseil possède des défis et un mode de fonctionnement qui lui sont propres. Le respect de l'autonomie locale est un élément qui est souvent soulevé comme étant essentiel au bon fonctionnement des conseils à travers la province. Une description exhaustive existe des responsabilités légales et des différents recours déjà prévus, notamment dans la Loi sur l'éducation et la Loi sur les municipalités. Plusieurs recours existent déjà qui ne sont pas utilisés et qui sont très mal connus. Apprenons plutôt à nous servir des outils qui sont à notre disposition.

(2) Dangers dans la définition de ce qui est la réussite des élèves : selon le projet actuel, la ministre de l'Éducation pourrait prendre contrôle d'un conseil scolaire lorsque celui-ci ne démontre pas de progrès dans l'atteinte des cibles de réussite scolaire fixées par le gouvernement. Il n'est pas acceptable que la ministre ait le droit de prendre la gouvernance d'un conseil strictement sur les bases de la réussite des élèves. Un conseil scolaire pourrait faire très bonne figure pour la réussite des élèves et faire usage de très mauvaises pratiques au niveau de la gestion de ses budgets. Il ne faut pas limiter la mesure de succès des élèves, ou encore, d'une école, seulement selon les résultats compilés par l'OQRE. Cette approche vient contredire tout ce qui est à la base même de notre mandat à titre d'éducateurs au sein d'un système catholique en langue française.

Les investissements dans toutes sortes d'initiatives liées à la Politique d'aménagement linguistique, en construction identitaire par exemple, constituent un élément clé au niveau de la réussite des élèves des conseils scolaires de langue française. Quoiqu'il soit difficile à évaluer, cet élément culturel est tout aussi important aux yeux des conseillers scolaires dans la définition du succès que les résultats au « testing » de l'OQRE. Se limiter aux données de l'OQRE serait en sorte de réduire l'impact de l'école de langue française au sein de nos communautés à son plus simple dénominateur.

De plus, nos conseillers de langue française vivent des situations difficiles propres à leur réalité de conseils scolaires œuvrant en milieu minoritaire. Ces facteurs peuvent expliquer la difficulté ou l'impossibilité pour certains d'atteindre les cibles fixées par le ministère : taux de roulement du personnel élevé au sein des conseils; milieu francophone très minoritaire; situation socio-économique défavorisée d'une région; non-disponibilité des services d'appui, comme l'orthophonie; absence de ressources humaines pour livrer les services spécialisés.

Malgré tous les efforts réalisés au cours des derniers 10 ans pour combler les écarts, ces facteurs demeurent critiques au sein des communautés de langue française et entravent la réussite scolaire des élèves.

(3) Amender la section 58.1 afin de garantir la représentation des communautés isolées au sein des conseils scolaires (ajout de conseillers).

Quoique le Comité pour l'examen de la gouvernance en Ontario n'avait pas de mandat d'étudier la possibilité de fusion de conseils scolaires ou d'administrations scolaires et qu'aucune mention n'y est faite dans son rapport, la ministre a pris soin de prévoir les mesures légales dans le projet de loi 177 pour accommoder son plan de fusion des administrations scolaires. La fusion des six administrations scolaires catholiques de langue française avec les conseils scolaires catholiques de langue française n'a pas été bien accueillie par l'AFOCSC. De fait, l'AFOCSC a décidé, le 9 octobre dernier, d'intenter un recours judiciaire et d'amener le gouvernement provincial devant les tribunaux puisqu'elle estime que des droits de la gouvernance protégés par

l'article 23 de la Charte canadienne des droits et libertés ont été violés.

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En examinant la section 58 du projet de loi 177, vous détecterez ces dispositions permettant aux conseils de demander à la ministre d'augmenter ou de diminuer le nombre de conseillers scolaires. Cette disposition avait été prévue pour accommoder les conseils qui désireraient frapper à la porte de la ministre suivant les fusions des administrations pour ajouter à leur table un poste ou plus, afin d'assurer une représentation politique des parents de ces régions isolées.

La ministre relègue aux conseils la responsabilité de créer ce poste et se réserve le droit de l'accorder selon des critères démographiques ou géographiques. L'ajout des administrations scolaires ne représente pas une grande augmentation du territoire de nos conseils, qui sont déjà immenses, donc nous doutons que la ministre ait à accepter cette demande. D'autre part, le projet de loi 177 n'oblige pas les conseils à créer ce poste additionnel. Sans cette garantie d'un conseiller avec droit de vote, nos communautés francophones isolées craignent que le grand conseil d'accueil qui est désormais chargé de la gestion de leurs écoles isolées ne puisse pas répondre à tous leurs besoins à cause des autres pressions financières existantes.

Si le financement provenant du gouvernement est insuffisant, les conseillers scolaires se trouveront dans l'obligation de fermer ces petites écoles qui constituent le cœur de nos communautés francophones du nord de la province. Par conséquent, l'odieux du geste reviendrait aux conseillers scolaires.

Nous insistons donc pour que cette section du projet de loi soit modifiée et que la ministre reconnaisse le rôle que jouent les conseillers dans la gestion scolaire et l'importance de s'assurer une représentation garantie des parents ayant droit au plan politique par des conseillers pour représenter les régions isolées au sein des conseils d'accueil. Cette mesure viendrait éliminer le risque d'iniquité en termes de représentation qui risque de s'installer au sein de nos communautés depuis l'imposition, en septembre 2009, de la fusion des administrations scolaires en Ontario.

(4) Augmentation du niveau d'intervention du ministère de l'Éducation, ou du/de la ministre : le ministère de l'Éducation peut certainement agir comme agent garant de la réussite des élèves. Il est cependant important d'analyser à fond les conditions qui mènent au succès ou aux écarts avant de poser des gestes. Le ministère doit travailler en collaboration avec les conseils scolaires pour assurer le succès des jeunes. Il serait dommage de voir le ministère adopter une approche punitive lorsque les cibles ne sont pas atteintes, et les conseillères et conseillers scolaires s'y objecteraient fortement.

Le règlement que-

Le Président (M. Shafiq Qaadri): Merci, madame Petit-Pas, et merci aussi à votre collègue, M^{me} Drouin. Votre temps est regrettablement expiré. Merci pour votre soumission et votre représentation de la part de l'Association franco-ontarienne des conseils scolaires catholiques.

CAMPAIGN FOR PUBLIC EDUCATION

The Chair (Mr. Shafiq Qaadri): Now I would like to invite our next presenter to come forward: Mr. Stephen Seaborn of the Campaign for Public Education. Welcome, and please begin.

Mr. Stephen Seaborn: Thank you, committee members.

Through community outreach, research, policy development and advocacy, the Campaign for Public Education has been an important advocate of Toronto's publicly funded education system during the past decade. Organizations representing parents, such as the federation of Chinese parents of Toronto, community organizations, such as the Urban Alliance on Race Relations, front-line education staff and educational researchers, including teachers' federations, and social agencies, including the social planning council of Toronto, gather around our campaign table.

Our considered view, after study, consultation and receiving legislative legal opinion, is that Bill 177 will have serious implications for Ontario's existing education system. The unprecedented power which would be transferred to the provincial government to unilaterally determine the duties and responsibilities and respective roles of school boards, board members and their officers will significantly hamper their ability to perform their current responsibilities.

Rather than enshrining clarified roles of individual trustees, school board chairs and education directors in the new legislation, Bill 177 actually gives a great deal of latitude to the provincial government of the day to determine by regulation the respective duties and roles. In fact, under section 26 of the bill, the minister is granted unilateral authority to promulgate a code of conduct for board members without any public debate or input and with no meaningful limitations within the act to circumscribe this power.

Providing for this kind of broad discretion without going through any legislative process, in our opinion, would be absolutely unheard of for any school council, any union, any not-for-profit corporation or any number of civic organizations in our society today. "An abomination" is actually what one of our members called it last night at our meeting.

Apart from these significant regulatory powers, Bill 177 would impose new legislative limits on the role and activities of school trustees. Most significant are the limitations contained in a new section of the act, 218.1(d), which requires a board member to "support the implementation of any board resolution after it is passed by the board," as provided for in the previous section, 218.1(e).

Not only does this prohibit board members from criticizing any board resolution with which they disagree once it has been passed by a majority of the board, but this section places an affirmative obligation on a member to support it. In light of the democratic role played by school trustees since the 19th century in this province, this kind of what people call a "gag order" must surely be unacceptable and worth reviewing.

The provision could certainly be the subject of a constitutional challenge, as mentioned by the previous speaker, since it would appear to limit the freedom of expression of school board trustees set out in section 2(b) of the Canadian Charter of Rights and Freedoms.

While infringements on freedom of expression, belief, thought and opinion may be justified when they constitute a reasonable limitation, it is the opinion of our legal advisers that "it would be difficult for the government to justify this provision in light of the historical role of school trustees and the fact that board members do not function as a unified executive or cabinet."

Clause 218.4(e) of the proposed act would provide that the chair of a board shall act as spokesperson to the public on behalf of the board unless otherwise determined by the board. Taken together with the requirement that every board member support board resolutions upon their adoption, this provision, by placing exclusive responsibility for communicating with the public in the hands of the board chair, clearly appears to limit public discussion and debate even further.

The bill would constitute a clear departure from the role trustees have historically assumed on behalf of their electors via the prohibition on "interfering in the day-to-day management of the school." This provision will certainly be interpreted as preventing school trustees from commenting on, questioning or advocating in relation to particular concerns or particular students or parents on the basis that such conduct constitutes interference with the day-to-day management of the school.

Further, a question: Does the bill's provision to "maintain focus on student achievement and well-being" preclude trustees from taking into consideration other non-student-related community issues relating to the use of schools and board policies impacting more broadly on the community as a whole?

The bill attempts to establish a number of duties for boards of education as a whole, including an obligation to "deliver effective and appropriate education to all pupils" and promote their well-being, a laudable goal statement. However, we all know that school boards were stripped of their taxation powers under the previous government and are thus limited in their ability to provide effective programs by the extent of funding provided by the government of the day.

It would surely be generally considered unfair, in a legal sense, to place the entire legal obligation of providing effective and appropriate education on school boards alone, yet this is precisely what is laid out in the set obligations contained in section 16 of the bill. We are advised that this may well involve school boards in significant litigation as to whether in particular cases they may have met required standards.

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Finally, I'd like to offer our last point from a UK government watchdog on sustainability. In that agency's 10-year vision for public education, it insists that, "Most of all, we want to see children and young people feel ready to stand up for what they know is right." Our sincere hope is that this committee will do likewise.

The Chair (Mr. Shafiq Qaadri): Thank you very much, Mr. Seaborn. Forty seconds per side. Mr. Marchese.

Mr. Rosario Marchese: Thank you, Stephen. I just wanted to comment on the conduct of members because I've been offended by this from the very beginning. What it says—and that's where I find it silly—in terms of their role, it is to attend meetings, which is what they are doing; consult with parents, which is what they should be doing; bring concerns of parents to the board; and maintain focus on student achievement. And then it has limitations, two of which you mentioned, which are, to support the implementation of any board resolution—which means, "Shut up if you disagree"—and the other one is to refrain from interfering, which could have broad application—all of which renders the role of school trustees meaningless, don't you agree?

Mr. Stephen Seaborn: I'm not sure that this government, the people who elected this government or this committee would actually want that to be the case. I'm assuming not.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. Ms. Sandals.

Mrs. Liz Sandals: Thank you for your comments. One of the suggestions that a number of the deputants have made is that it would actually be more in line with the original intent of the support clause if we were to say—and note that it's "uphold implementation"; it doesn't say "uphold the idea" or "support the idea." It would talk about upholding implementation. So while you might not agree with the resolution, you don't interfere with the implementation of the resolution once it has been passed by the majority—

The Chair (Mr. Shafiq Qaadri): I need to intervene there, Ms. Sandals. Ms. Jones.

Ms. Sylvia Jones: I'm going to be brief. Mr. Seaborn, thank you for your presentation. I'm going to mark you down as opposed to Bill 177.

Mr. Stephen Seaborn: I think that would be fairly accurate on behalf of all our groups that sit around our table.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones, and thanks to you, Mr. Seaborn, for your deputation on behalf of Campaign for Public Education.

TORONTO DISTRICT SCHOOL BOARD

The Chair (Mr. Shafiq Qaadri): I invite now our next presenter, Mr. John Campbell, chair of the Toronto District School Board. Welcome, Mr. Campbell. You've seen the protocol. I invite you to please begin now.

Mr. John Campbell: I think I understand the ground rules, thank you.

I would like to thank you, the members of the Standing Committee on Social Policy, for giving us the opportunity to speak to you today about Bill 177.

Over the past several years, the TDSB's governance committee has spent considerable time looking into the roles of the board, individual trustees and how they interact with the roles of directors of education and the Minister of Education. These roles and relationships have changed substantially over the past few decades as the government has assumed more responsibility for taxation and curriculum.

Increased centralization has meant decreased autonomy for boards. It has meant that elected trustees must not only meet the expectations of their constituents but also the increasing demands of the Ministry of Education. These changes have led to some confusion and tension as individuals struggle to understand where the new jurisdictional boundaries lie. This confusion distracts trustees, board staff and the ministry from our primary task: to support schools so that they can help our children develop into knowledgeable, caring and productive members of society.

We welcome the government's effort to bring greater clarity to the roles of all players in the education system. Properly done, this will reduce jurisdictional ambiguity and increase student success. Our governance committee members worked closely with the Ontario Public School Boards' Association to develop OPSBA's response to Bill 177, and we strongly support OPSBA's recommendations to this committee.

We felt there were three additional areas of insight that we wanted to provide to the committee, and these are:

(1) the duty of the board to monitor and evaluate all elements of the director of education's performance and to take corrective action as needed;

(2) the duty and power of individual trustees to act in ways that allow the board to fulfill its obligation; and

(3) the need to recognize the ministry's role in setting the conditions that determine a board's ability to reach its goals as set by the ministry.

On monitoring and evaluation of the director's performance, perhaps the most basic role that any board can fill is the ongoing monitoring and evaluation of the CEO's performance and taking appropriate action when necessary to assure that the whole organization is achieving the board's goals. Quite surprisingly, this function is missing from the list of duties as described in 169.1(1) and should be added. The closest the bill comes to addressing this duty is in clause (f), but it has two significant limitations. First, it refers to monitoring but not to evaluating or taking action, and second, it refers only to monitoring "obligations" under the board's multi-year plan.

We believe that the director of education needs to be fully accountable to the board, and there could be no effective oversight or accountability if Bill 177 does not explicitly recognize that the board has both the power and the duty to monitor, evaluate and act on the director's performance.

We suspect that 169.1 was intended to give the board sufficient power to provide that oversight, but unfortunately the wording does not achieve that goal. Without this explicitly stated role and authority, the board cannot fulfill its defined obligations to promote student outcomes, to ensure effective stewardship of the resources and to deliver effective programs to students.

We therefore request that (f) be amended to read:

"(i) monitor and evaluate the performance of the board's director of education, or the supervisory officer acting as the board's director of education, in meeting his or her obligations under the plans referred to in clause (e) and effectively implementing other direction provided by the board, and

"(ii) take appropriate action based on the evaluation in (i) above."

This revised wording would recognize that the board is the director's employer and that the director is responsible for carrying out the instructions of the board.

On the duty and power of trustees to further the goals of the board, collectively as a board, trustees are responsible for the well-being of both our students and the board. However, the role of trustees, as set out in 218.1, is so limited as to constrain their ability to fulfill their collective duties. Simply put, the collective board is only as effective as the contributions and actions of its individual members. The quality of board decision-making and oversight will be seriously impaired if individual trustee duties are limited to the narrowly defined parameters described as attending meetings, consulting with parents, supporting implementation of board policies etc.

Clearly, it is not practical to develop a comprehensive list of every contingency and action that individual trustees should take to ensure that the collective board action leads to greater success. We therefore urge the committee to add the following to 218.1, just before the list of duties: "act in ways to help the board fulfill its obligations under 169.1(1), but not limited to." This overarching expectation would set a high standard for individual trustees and allow them to act individually to take actions needed to achieve the fundamental goals of the Education Act.

Lastly, on the joint responsibility for student success, 169.1(1)(a), (b) and (c) define the three duties of the school boards:

"(a) promote student outcomes specified in regulations....;

"(b) ensure effective stewardship of the board's resources;

"(c) deliver effective and appropriate education programs to" students.

These duties lie at the core of the bill. Failure to achieve any of these goals would likely cause the minister to take action to correct the situation. Sometimes the action would involve additional support. At other

times, it might involve placing a supervisor to run the board. These are very serious clauses.

The point that we would like to make is that from time to time, the ministry may take an action which places these clauses in conflict with each other. If this were to happen, the board would be placed in an impossible situation between a rock and a hard place. For example, there may be instances where the outcomes, as specified by the minister under section 11.1, cannot be achieved with the resources provided by the government. In this case, the board would find itself unable to meet its obligations under both (a) and (b).

To prevent such a dilemma, we urge the committee to add a section to the bill that ties the board's accountability to an obligation by the minister to ensure that the resources referred to in (b) are adequate to achieve the outcomes in (a) and deliver the programs in (c). This obligation would require the ministry to consider local circumstances beyond a board's control that affect student outcomes—circumstances like poverty, student hunger, cultural challenges, remote communities, lack of community cohesion, available social supports, immigration challenges and language barriers. Absent this obligation, it is possible that the ministry may overpromise what a board can deliver with the resources offered.

The addition of this suggestion would have two practical implications. Since the ministry's role will be explicit and visible, it is likely that the ministry will take great care in setting regulations and policies for the board to follow. When the ministry is required to intervene in a board's affairs, it will be obligated to examine how its own actions have contributed to the problems it is investigating as well as any shortcomings of the board. Such an examination will improve the situation for our students, which, of course, is the fundamental goal of the legislation.

1800

I thank you all for your time and consideration of our concerns in regard to this bill.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Campbell. Forty seconds a side, beginning with Mrs. Sandals.

Mrs. Liz Sandals: Thank you very much. I'd like to congratulate Toronto District School Board on the amount of time you've spent thinking about governance. I know that your board and a number of associations in the governance review committee actually have been giving very serious consideration to what we can do to improve school board governance, so thank you for your constructive suggestions and for the time that your trustees have spent thinking about this.

Mr. John Campbell: I will pass that along. Thank you for those comments.

The Chair (Mr. Shafiq Qaadri): Mrs. Witmer.

Mrs. Elizabeth Witmer: Thank you very much, Mr. Campbell. I look forward to reviewing your comments, since we didn't have a copy, but—

Mr. John Campbell: No, I only have one copy myself.

Mrs. Elizabeth Witmer: Right. No, that's fine.

Mr. John Campbell: I'll see that they get sent out.

Mrs. Elizabeth Witmer: Okay; that would be great. I did think they were very thoughtful, and there is certainly an opportunity for us to use some of that in making amendments to the legislation.

Mr. John Campbell: Thank you.

The Chair (Mr. Shafiq Qaadri): Mr. Marchese.

Mr. Rosario Marchese: Thank you, John, for your presentation. I liked it very much. I was going to say that this bill should be scrapped, in fact, but you have offered the government an opportunity to actually potentially fix it. If they take 90% of your suggestions, they might be able to fix it. We'll see.

Mr. John Campbell: Time will tell.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Campbell, for your deputation on behalf of the Toronto District School Board.

ASSOCIATION DES CONSEILS SCOLAIRES DES ÉCOLES PUBLIQUES DE L'ONTARIO

Le Président (M. Shafiq Qaadri): Maintenant, j'ai le plaisir d'accueillir notre prochaine délégation, M. Ronald Marion, président de l'Association des conseils scolaires des écoles publiques de l'Ontario.

Ah, Madame. Vous devez vous présenter.

M^{me} Louise Pinet: De toute évidence, M^e Marion n'est pas ici. Il est en Cour.

Le Président (M. Shafiq Qaadri): Merci. Officiellement, s'il vous plaît, commencez.

M^{me} Louise Pinet: C'est officiellement commencé?

Le Président (M. Shafiq Qaadri): Oui.

M^{me} Louise Pinet: Alors, merci beaucoup, monsieur le Président, mesdames et messieurs les députés, monsieur le greffier, mesdames et messieurs.

L'Association des conseils scolaires des écoles publiques de l'Ontario est l'association provinciale qui représente les quatre conseils scolaires publics de langue française au service des élèves inscrits dans les écoles en vertu des seuls critères de l'article 23, la langue française.

Les inscriptions dans nos écoles ont augmenté de plus de 25 % en 10 ans d'existence et le rendement accru des élèves est une preuve de la réussite de l'éducation publique en français. Ce projet est d'envergure.

Dans un premier temps, nous souhaitons préciser le contexte particulier en regard des droits à l'éducation. Dans le jugement Arsenault-Cameron, la Cour suprême a précisé que oui, la province a un intérêt légitime dans le contenu et les normes qualitatives des programmes d'enseignement pour les communautés de langues officielles, et elle peut imposer des programmes dans la mesure où ceux-ci n'affectent pas de façon négative les préoccupations linguistiques et culturelles légitimes de la minorité. La taille des écoles, les établissements, le transport et les regroupements d'élèves peuvent être réglementés, mais tous ces éléments influent sur la

langue et la culture et doivent être réglementés en tenant compte de la situation particulière de la minorité et de l'objet de l'article 23, qui est l'accès à une école de langue française en milieu minoritaire.

L'ACÉPO recommande que le gouvernement tienne compte des réalités linguistiques et culturelles, ainsi que de la spécificité des conseils scolaires publics de langue française de par l'étendue géographique de leur territoire et le nombre d'élèves et de contribuables, dans la mise en œuvre de ce projet de loi.

Vous savez que les textes de ce projet sont grands. Ils veulent desservir tout le monde. C'est surtout dans la réglementation et dans la mise en œuvre que nous, au niveau des écoles de langue française, trouvons les difficultés.

Par exemple, vous dites, « Mais, oui, il faut avoir des comités de parents au niveau d'un conseil scolaire. » Mais lorsque nous avons des parents à Wawa, à Sudbury et à Blind River qui doivent tous faire un comité, comment le faisons-nous? Comment faisons-nous aussi pour travailler avec 130 municipalités alors qu'il nous faut discuter avec chacun d'eux? Est-ce que nous excluons, par exemple, les gens qui veulent travailler du côté externe et les prenons seulement où est le siège social? Et est-ce que nous cessons d'avoir nos réunions en fin de semaine et de les faire d'un endroit à l'autre afin d'avoir un lien avec nos communautés? L'impact est grandiose pour nous de la mise en œuvre de ce qui est proposé.

Nous voulons aussi rappeler au gouvernement que l'égalité réelle exige une mise en œuvre asymétrique. On ne peut pas être desservi de la même façon. Ainsi, l'ACÉPO recommande que le gouvernement tienne compte dans tous les critères du projet de loi touchant la réussite des élèves et la performance des conseils scolaires du droit de gestion, des réalités linguistiques et culturelles définies localement pour les communautés linguistiques. Essentiellement, vous mettez en place des critères, mais les critères doivent être ceux de la minorité linguistique.

Nous voulons aussi vous signaler que l'ACÉPO a bien étudié la position de l'Ontario Public School Boards' Association et y adhère. Nous voulons cependant mettre l'accent sur un des éléments, celui de la prise en charge d'un conseil scolaire pour des motifs rattachés au rendement des élèves.

Dans les cas où les besoins financiers ne permettraient pas au conseil scolaire de remplir son mandat d'éducation, le ministère de l'Éducation devrait avoir un processus rapide, crédible et obligatoire pour la révision des demandes financières, l'octroi de financement pour l'ouverture d'écoles—achats de terrain, achats d'écoles, mises en disponibilité etc.—en cours d'année financière et une contribution pour suppléer au financement non accessible aux conseils scolaires publics de langue française; redevances pour la construction d'écoles, par exemple.

Le ministère de l'Éducation détermine le curriculum et les programmes et octroie le financement au conseil scolaire. Dans ce contexte, comment peut-il tenir le conseil scolaire responsable alors que la capacité d'action du conseil scolaire dépend entièrement du ministère de l'Éducation?

Le ministère pourrait intervenir de façon positive en assurant une formation ciblée, un investissement de ressources diverses ou une aide professionnelle, mais la prise en charge d'un conseil qui remplit pleinement son mandat sauf qu'il n'obtient pas les résultats scolaires voulus et les cibles de la province me semble aberrant. C'est difficile de concevoir les deux.

Alors, l'ACÉPO est en accord avec la position énoncée par l'Ontario Public School Boards' Association dans le mémoire que nous avons joint, et nous espérons que le gouvernement tiendra compte de ces recommandations.

Je termine en disant que depuis l'obtention de la gestion scolaire en 1998, les améliorations du financement de notre système public français s'est fait par étapes. Les corrections et les adaptations des politiques se vivent par étapes. L'établissement du réseau procède par étapes. Nous sommes encore le seul conseil qui n'a vraiment pas un système provincial, mais on nous demande d'établir des priorités comme si notre territoire était suffisamment petit pour permettre de décider dans quel petit endroit de la même ville nous pourrions placer notre école, alors qu'il nous oblige à choisir une école—en fait, une ville—au lieu d'une autre.

Alors, dans l'envergure des modifications proposées par le projet de loi 177, ce sera dans la réglementation que les conseils scolaires publics de langue française découvriront réellement l'impact de cet encadrement juridique.

L'ACÉPO souhaite participer activement à l'élaboration des règlements et des décisions ministérielles qui découleront du projet pour qu'elle soit faite dans le plein respect de la Charte canadienne des droits et libertés. Merci.

Le Président (M. Shafiq Qaadri): Merci, madame Pinet. À peu près une minute pour les partis politiques, commençant avec le gouvernement. Madame Sandals.

Mrs. Liz Sandals: Merci, Louise.

You identified the geographic challenge that you're going to have around having a board-wide pick, and that will be laid out in regulation, the details of how that will work. Will you have some specific recommendations around how that could be managed when we get to that consultation point?

M^{me} Louise Pinet: Absolutely. We want to make this work. We want our school boards to work. Therefore, we have to find mechanisms, but sometimes it is only after the rules are in—sometimes we think they will work, but they don't; they are not practical for us. There has to be some flexibility. If you take a parents' group, that's one thing. If you take the audit committee, that's another one that's problematic. Right now, today's announcement, which should be positive, is problematic. We have one school board that has over 120 municipalities—

Le Président (M. Shafiq Qaadri): Merci, madame Sandals. Je passe la parole à madame Witmer.

Mrs. Elizabeth Witmer: Thank you very much, Louise. Thank you for pointing out the unique challenges that your board would face, and I hope that the government, in moving forward with implementation, would take those into consideration.

M^{me} Louise Pinet: Merci.

Le Président (M. Shafiq Qaadri): Merci, madame Witmer. La parole est à vous, monsieur Marchese.

M. Rosario Marchese: Louise, une question: Dans les objets, le projet de loi dit, « Tous les partenaires du secteur de l'éducation ont un rôle à jouer dans l'amélioration du rendement des élèves et de leur bienêtre, la suppression des écarts en matière de rendement. » Ça, selon moi, impose une grande obligation aux conseils scolaires sans vous donner les appuis dont vous avez besoin. Que pensez-vous de ça?

M^{me} Louise Pinet: C'est la problématique dans tout ceci : comment s'assurer qu'une minorité linguistique—c'est-à-dire qui déjà n'a pas les infrastructures à l'appui de son épanouissement dans son milieu—soit en mesure d'avoir une école qui ait du succès. Nous avons trouvé des mécanismes. Nous avons plus d'élèves et nous avons du succès. Mais par contre, chaque changement nous amène des défis particuliers dont il faut toujours tenir compte pour pouvoir arriver à continuer l'établissement des écoles linguistiques dont le seul facteur est la langue—

Le Président (M. Shafiq Qaadri): Merci, monsieur Marchese, et vous aussi, madame Pinet, pour votre députation et soumission pour l'Association des conseils scolaires des écoles publiques de l'Ontario.

M^{me} Louise Pinet: Merci. Il faut toujours parler très vite ici.

TORONTO CATHOLIC DISTRICT SCHOOL BOARD

The Chair (Mr. Shafiq Qaadri): I welcome now our next and final presenters of the evening, Ms. Kennedy and Ms. Andrachuk of the Toronto Catholic District School Board. Welcome. Please be seated. I'd invite you to please begin now.

Ms. Angela Kennedy: Good afternoon, Dr. Qaadri, and thank you to the members of the standing committee for allowing us to present to you today. I'm addressing you as the chair of the Toronto Catholic District School Board, but, as you are aware, we are a school board under supervision, and I'm speaking on behalf of the following elected trustees: Joseph Martino, Sal Piccininni, Mary Ann Robillard, Barbara Poplawski, Paul Crawford, myself and Ann Andrachuk. Ann Andrachuk is the appointed vice-chair of the board at the moment, and she's accompanying me today. We have copies of the presentation for all the committee members if you would like to have them.

I'd like to start with the purpose, 0.1(1), a "Strong public education system." Trustees in our board support this addition to the Education Act. It recognizes a shared

responsibility for all educational partners.

On the regulations—roles, responsibilities, powers and duties of boards-"The Lieutenant Governor in Council may make regulations governing the roles, responsibilities, powers and duties of boards, directors of education and board members, including chairs of boards." There is insufficient detail in this revision to predict the impact of such a regulation, which does not include consultation and public scrutiny. Public process and transparency are essential to instill trust and faith in our publicly funded system. We recommend removal of section 4.

Duties of board members: Trustees embrace the addition and clarification of the roles and responsibilities of the educational partners. The proposed addition upholds the importance of the role of democratically elected trustees. It should also be recognized that the list of responsibilities and duties of trustees is extensive and would be difficult to include all stakeholder expectations.

Specifying requirements to new section 169.1 by developing, reviewing, resourcing and communicating the boards' multi-year plans is very good, but appears to force boards to focus on the ministry's mandate, allowing for little autonomy to pursue their own local goals and mission. The ministry must provide resources to boards, allowing flexibility in delivery of programs.

Trustees have serious concerns about new clause 218.1(d) of the act, section 26 of Bill 177, which reads as

follows:

"A member of a board shall

"(d) support the implementation of any board resolution after it is passed by the board."

A trustee has a responsibility to their local constituents, and when restrictions are placed on trustees which restrict their ability to bring issues to the attention of the board, such a regulation is inappropriate and unacceptable to the democratic process. Our first responsibility is to the electorate, while following the guidelines of the Ministry of Education.

Clause 218.1(d) is unnecessary and inappropriate, given our fiduciary responsibilities in the law. We recommend that this section be removed.

Code of conduct: Most school boards have trustee codes of conduct in place which have been developed, implemented and revised and have provided a compass to direct the proceedings of trustees. From time to time, issues that arise may be addressed, and the process is in place where these changes can be made.

Trustees support the new provincial code of conduct. The autonomy of school boards must be retained but, in consultation with the ministry, a provincial template can be developed which will provide transparency of process and accountability. In the event of a breach of conduct, regulations should be in place to apply appropriate sanctions.

Enforcement of the code of conduct: On subsection 218.3(4), we recommend the following change: that a meeting would be held in private to protect any disclosure of information of an intimate, personal or financial nature. These recommendations should be included in the board's code of conduct. The ministry should include these items in regulation.

We recommend the following addition to section

218.3:

"Right of appeal for a member of a board

"(5) The ministry compile a neutral 'third party' list of qualified persons that boards can access to investigate any alleged breach of the code of conduct. Consideration should be made for the four publicly funded systems.

"(6) A member of the board has equal access to a neutral 'third party' list of qualified persons to select a representative to investigate charges of an alleged breach of the code of conduct and to arbitrate said disputed

"(7) Until the appeal process is completed and a final decision is rendered, no sanctions would be enforced."

Clause 228(1)(b) of the Education Act provides that a member of a board vacates their seat if they absent themselves without being authorized by resolution from three consecutive regular meetings of the board.

We recommend the following revision: sanctions placed on a board member based on a breach of the code of conduct should be restricted to reasonable limits dependent on the nature of the breach of conduct. Removal for any period would be moved by motion of the board, and this decision would be reflected in the board minutes."

In conclusion, I would like to thank you for this opportunity to address you with our comments and recommendations on Bill 177, the Student Achievement and School Board Governance Act, 2009.

The passage of Bill 177 will have a very significant impact on the roles, responsibilities, powers and duties of school boards. It is too early to say how the passing of this bill will impact provincial education, but we expect a further enhanced focus on student achievement and success and accountability of the system to the public.

Trustees support the recommendations forwarded for consideration for changes to the Education Act. Thank you for this opportunity to address the com-

I'd just like to draw your attention to the fact that the last page of our presentation contains a summary of all our recommendations.

The Chair (Mr. Shafiq Qaadri): Thank you. About a minute per side, beginning with the PCs: Ms. Witmer.

Mrs. Elizabeth Witmer: Thank you very much, Angela. This will be very easy to read, and I appreciate the time and effort that you and your trustees have put into this.

How many other trustees are there on your board? You represent seven?

Ms. Angela Kennedy: Yes. We have one trustee who's ill at the moment and then we have four other trustees. Twelve in total.

Mrs. Elizabeth Witmer: So they are not represented in your presentation, then?

Ms. Angela Kennedy: No, they are not.

Mrs. Elizabeth Witmer: Okay. All right. Thank you so much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Witmer. Mr. Marchese.

Mr. Rosario Marchese: You didn't comment on 218.1(e), which is "refrain from interfering in the day-to-day management of the board"—

Ms. Angela Kennedy: Thank you for bringing that to my attention. I wanted to mention that we wanted to delete that reference to (e). Thank you. I meant to do that.

Mr. Rosario Marchese: So if you take (e) out—and you don't support (d) either; is that what I recall? It's "support the implementation of any board"—

Ms. Angela Kennedy: That's right.

Mr. Rosario Marchese: Right?

Ms. Angela Kennedy: Yes, that's correct.

Mr. Rosario Marchese: So if you take that out, then what is left, in terms of breaches, is: a trustee doesn't attend meetings—it doesn't say how many; a trustee doesn't consult with parents, which means you have to spy on whether they're consulting or not; and "maintain focus on student achievement." Imagine that you would be fined in terms of breaches of this code. Does that make any sense to you in terms of what they're trying to do?

Ms. Angela Kennedy: Would you like to speak to

that?

Ms. Ann Andrachuk: Mr. Marchese—is this on?

Mr. Rosario Marchese: Yes, it's on.

The Chair (Mr. Shafiq Qaadri): Sorry, I'll need to intervene there. Ms. Sandals.

Mrs. Liz Sandals: Yes, thank you. I'm looking at page 6 of your presentation.

The Chair (Mr. Shafiq Qaadri): You have one

Mrs. Liz Sandals: We've received conflicting advice on this issue of whether a sanction meeting should be held in open or closed session. So, going over to the top of page 6, when you're talking about a concern about disclosures of information that would be normally discussed in camera, is that disclosure of information on items that would normally qualify for in camera—issues that are before the board which you don't want accidentally disclosed—or are you talking about disclosure of information about the individual trustee?

Ms. Angela Kennedy: Disclosure of information about the individual trustee.

Mrs. Liz Sandals: And you don't have a concern about disclosure of information which would be—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Sandals, and thanks to you, Ms. Kennedy and Ms. Andrachuk, for your deputation on behalf of the Toronto Catholic District School Board.

If there's no further business before the committee, I'd just remind the committee members: deadline for amendments, October 25, 5 p.m., and we'll have clause-by-clause hearing on Monday, November 16. Committee adjourned.

Interjections.

The Chair (Mr. Shafiq Qaadri): Committee reconvenes. Do I have a proposal with reference to deadline for amendments? First, do I have unanimous consent for such? Yes.

Mr. Rosario Marchese: It's for a week later—is that what you're asking? So you want to move a motion to that effect?

Mrs. Elizabeth Witmer: I do.

Mr. Rosario Marchese: Whatever week that is.

Mrs. Elizabeth Witmer: Yes, a week later than the 29th. What's that date?

Mrs. Liz Sandals: So we—Thursday or whatever that

Mrs. Elizabeth Witmer: Let's make it Friday.

The Chair (Mr. Shafiq Qaadri): It would be Thursday, November 5.

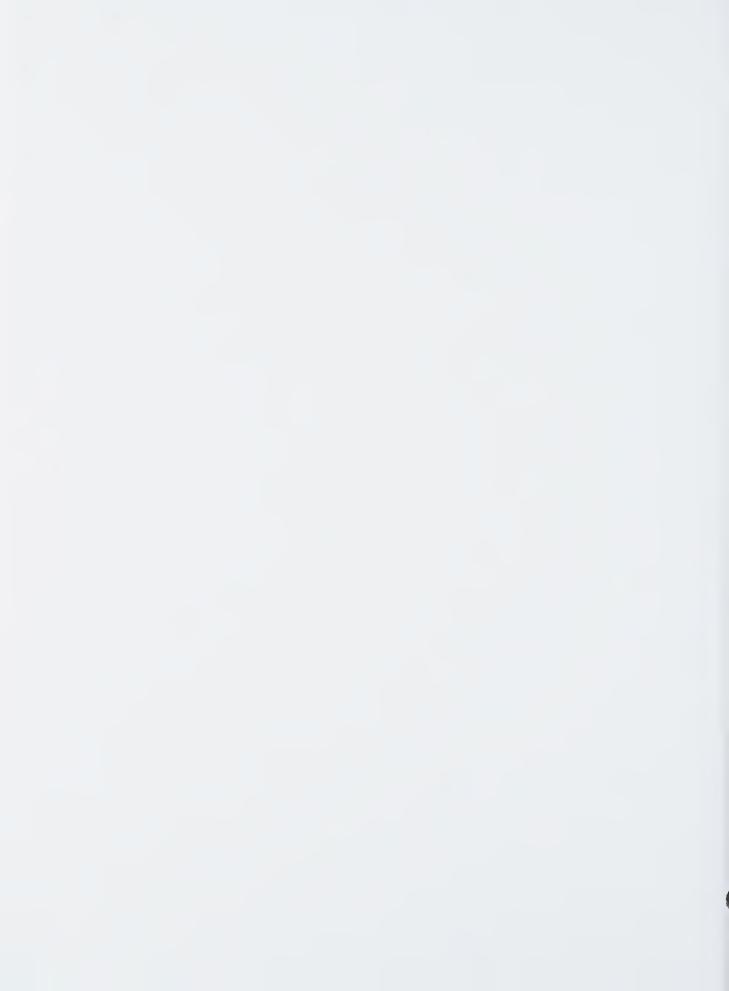
Mrs. Liz Sandals: That's fine. Thursday, November

The Chair (Mr. Shafiq Qaadri): So do I take that as the will of the committee? Unanimous? Thursday, November 5, 5 p.m., or forever hold your peace. Thank you

All right, committee adjourned. *The committee adjourned at 1820.*







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Monday 16 November 2009

Standing Committee on Social Policy

Student Achievement and School Board Governance Act, 2009

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Première session, 39^e législature

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Chair: Shafiq Qaadri Clerk: Katch Koch Président : Shafiq Qaadri Greffier : Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Monday 16 November 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Lundi 16 novembre 2009

The committee met at 1405 in committee room 1.

The Chair (Mr. Shafiq Qaadri): Colleagues, I'd like to call to order the meeting of the Standing Committee on Social Policy. As you know, we're here to consider Bill 177 in reference to the Education Act.

SUBCOMMITTEE REPORT

The Chair (Mr. Shafiq Qaadri): Before proceeding, we have a subcommittee report, which I would invite Mrs. Mitchell to please read into the record.

Mrs. Carol Mitchell: Your subcommittee on committee business met on Monday, November 2, and Tuesday, November 10, to consider the method of proceeding on Bill 168, An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace and other matters, and recommends the following:

- (1) That the committee meet for the purpose of holding public hearings on November 17, 23 and 24, 2009.
- (2) That the clerk of the committee, with the authority of the Chair, place an advertisement for one day about the public hearings in major newspapers.
- (3) That the clerk of the committee post information regarding the hearings on the Ontario parliamentary channel and the Legislative Assembly website.
- (4) That interested people who wish to be considered to make an oral presentation on Bill 168 should contact the clerk of the committee by Monday, November 9, 2009, at 5 p.m.
- (5) That the clerk of the committee provide a list of all interested presenters to the subcommittee following the deadline for requests.
- (6) That the subcommittee provide the clerk with their selections for the hearings scheduled on Tuesday, November 17, 2009.
- (7) That groups and individuals scheduled on Tuesday, November 17, 2009, be offered 15 minutes for their presentation, which include questions from the committee.
- (8) That the clerk of the committee, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements to facilitate the committee's proceedings.

1410

The Chair (Mr. Shafiq Qaadri): Are there any comments, questions? Yes, Mr. Marchese.

Mr. Rosario Marchese: Two things, Mr. Chair. One, I'm not quite sure whether we've solved the issue that ONA raised, and that is that the committee had been made aware that the 17th did not work for them and that the 24th works for them. I'm not quite sure whether we've been able to accommodate them.

The Clerk of the Committee (Mr. Katch Koch): The committee has agreed to three dates: the 17th, 23rd and 24th. So far, the caucuses have only picked the individuals or the groups that have been scheduled for the 17th, so we didn't really deal with the 23rd or the 24th yet.

Mr. Rosario Marchese: Okay. So presumably—

The Clerk of the Committee (Mr. Katch Koch): They could be chosen for those dates.

Mr. Rosario Marchese: Okay. That's the first point.

The second one is that my colleague Gilles Bisson, in the subcommittee, talked about touring the province on this issue. Clearly there have been a number of requests from different people across the province, and it was his sense, and I agree, that this committee should do a little tour. It doesn't have to be a big one. That's what he recommended, and I agree with that and would wish to make an amendment to the subcommittee report that says that we will tour as a committee outside of Toronto.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. I'll have questions and comments on the issue of travel, and then, if need be, we can proceed to a formal amendment.

Ms. Sylvia Jones: I know as well from speaking to our labour critic that they are also interested in some travel outside of Toronto, so I would support that amendment.

The Chair (Mr. Shafiq Qaadri): We have an amendment on the floor with reference to the addition of travel for the committee. Mrs. Mitchell.

Mrs. Carol Mitchell: I just have a short comment. One of the things that we talked about as the subcommittee was the ability to hear from as many people as possible. There has been a lot of interest from people who have brought their names forward as wanting to present to the committee. As we have a number of presenters, the bulk is for Toronto. We feel that by shortening up on the time frame and allowing the three days to go forward, we

can hear from more people, and certainly that is something that we are very strongly in favour of.

The Chair (Mr. Shafiq Qaadri): So we'll have—Mr. Rosario Marchese: A recorded vote, Mr. Chair.
The Chair (Mr. Shafiq Qaadri): Recorded vote.
We'll proceed, then, as I understand it, to the vote.

All those in favour of an addition to the subcommittee report for the committee to travel, please say "aye."

Aye

Jones, Marchese, Witmer.

Nays

Aggelonitis, Albanese, Lalonde, Mitchell, Sandals.

The Chair (Mr. Shafiq Qaadri): I declare that particular amendment lost.

Also, just for committee members' information, in addition to all the various challenges that we deal with as MPPs with regard to the structure of this building—that, for example, every room has its own temperature, different ceilings, wood heating and all the rest of it—I think we're being treated to the entire floor vibrating because there's some—

Mr. Rosario Marchese: Could be a ghost.

The Chair (Mr. Shafiq Qaadri): It might be a ghost; quite right. I think there are some structural things. It's very prominent on this side of the room and very bizarre, but anyway, I thank you for your endurance.

Mr. Rosario Marchese: And, Mr. Chair, given that and the auditory problems, it's good for people to speak up.

The Chair (Mr. Shafiq Qaadri): Yes, thank you. Mrs. Mitchell.

Mrs. Carol Mitchell: I have a couple of amendments, if it would be appropriate, Chair, to bring them forward at this time.

The Chair (Mr. Shafiq Qaadri): Please.

Mrs. Carol Mitchell: That the presentations be allowed a 10-minute time allocation for the 23rd and the 24th, that the cut-off for amendments be November 27 at noon, and for clause-by-clause dates to be November 30 and December 1.

I just wanted to say, as a member of the subcommittee, that anyone who wants to make presentations from out of Toronto—what would they be able to do? I would look to the Chair for the options that would be available to them to present in a different manner other than to travel to Toronto.

The Chair (Mr. Shafiq Qaadri): The usual protocol, Ms. Mitchell, has been to either, as you know, come physically; if they can't do that or it's difficult, then to give an audio conference or even a video conference, and so on.

Mr. Marchese.

Mr. Rosario Marchese: I just want to say, with respect to that, that we all know, those of us who've been

around, that the most effective hearings are the ones where you're able to face the deputants face to face. That's the most effective way. Bringing people to Toronto is one way of doing it; it's just not the best way to do it. Some people will be discouraged from coming; we know that. We provide for teleconferencing, which is fine. It's not the same, but it's better than nothing. We ask people to send in their written reports, but I am telling you on the record that most people don't read most of the submissions that are submitted in writing. I want to put that on the record because I believe that to be true. We say it because we want to make ourselves feel good and make those who can't be here feel good that somehow their submissions are going to be taken seriously. But nothing beats the face-to-face meeting that you can have with people as they tell us what it is they want to tell us about a particular issue. That's why, when we have our meetings here in Toronto, it's nice, but we are discouraging a whole lot of people from deputing merely by being here in Toronto or just having meetings here in Toronto. I just want to put that on the record.

The Chair (Mr. Shafiq Qaadri): Are there any further questions or comments before we deal with the block amendments that Ms. Mitchell has put forward? Seeing none, we'll proceed to consider.

Those in favour of Ms. Mitchell's amendments with reference to the dates, cutoffs, timings per session? Those opposed? I declare those amendments to have been accepted, and they will be duly entered into the subcommittee record.

I believe there's no further business with reference to the subcommittee.

STUDENT ACHIEVEMENT AND SCHOOL BOARD GOVERNANCE ACT, 2009

LOI DE 2009 SUR LE RENDEMENT DES ÉLÈVES ET LA GOUVERNANCE DES CONSEILS SCOLAIRES

Consideration of Bill 177, An Act to amend the Education Act with respect to student achievement, school board governance and certain other matters / Projet de loi 177, Loi modifiant la Loi sur l'éducation en ce qui concerne le rendement des élèves, la gouvernance des conseils scolaires et d'autres questions.

The Chair (Mr. Shafiq Qaadri): We'll proceed now to clause-by-clause consideration of Bill 177. I invite Ms. Sandals to please begin.

Mrs. Liz Sandals: I move that subsection 0.1(1) of the Education Act, as set out in section 1 of the bill, be amended by striking out "cohesive" and substituting "civil."

Chair, do you wish that I just go directly into commenting on the rationale?

The Chair (Mr. Shafiq Qaadri): My wish is entirely aligned with your own, Ms. Sandals.

Mrs. Liz Sandals: Okay. This was commented on, I think, by Martha Mackinnon from Justice for Children and Youth and a few other speakers who were concerned that the purpose clause have some reflection of the democratic process and the whole concept of a civil society, so we have agreed with that in proposing the substitution.

The Chair (Mr. Shafiq Qaadri): Further comments or questions before we proceed to the vote?

Those in favour of government motion 1? Those opposed? I believe government motion 1 is carried.

Government motion 2.

Mrs. Liz Sandals: I move that subsection 0.1(3) of the Education Act, as set out in section 1 of the bill, be struck out and the following substituted:

"Partners in education sector

"(3) All partners in the education sector, including the minister, the ministry and the boards, have a role to play in enhancing student achievement and well-being, closing gaps in student achievement and maintaining confidence in the province's publicly funded education systems."

You will recall that there was a request from both the Catholic and francophone sectors that we recognize that there are several systems. You will notice that, at the very end, we have pluralized "systems." We've also recognized that the partners include the boards, and "board" is formally defined in the Education Act as being all those different systems.

The Chair (Mr. Shafiq Qaadri): Comments? Mr. Marchese.

1420

Mr. Rosario Marchese: I just want to say that what most of the people who came spoke about in relation to this is two things: one, that the government define what "student achievement" is, and these amendments do not do that; and secondly, that the government fund adequately the boards of education to be able to permit them to bridge the gap and to achieve the so-called student achievement that they're talking about. By the mere inclusion of "minister" in this clause, it doesn't do it. It just doesn't at all deal with what most of the deputants said with respect to this issue. I thought it was very clever of the government to throw in the word "minister." It makes it appear as if somehow the ministry and the minister, because they were omitted before, didn't have the same level of commitment to the issue of enhancing student achievement. But this doesn't help the arguments that I've made at all. The fact that you include the minister does not put on the government a responsibility to fund adequately the areas of education where people are saying, "We've got many problems in our educational system, and unless the government helps out in terms of dealing with issues such as mental illness or poverty, or a whole host of special education problems that the government is not funding, we won't be able to deliver on this." So, doing what the government members do doesn't deal with the issue at all, and I put that on the record so that the government members know.

The Chair (Mr. Shafiq Qaadri): Further comments with reference to government motion 2?

Seeing none, we'll proceed to the vote. Those in favour? Those opposed? Motion carried.

Shall section 1, as amended, carry? Carried.

We'll proceed to section 2: PC motion 3, presented by Ms. Witmer.

Mrs. Elizabeth Witmer: I move that subsection 2(1) of the bill be struck out and the following substituted:

"2(1) The definition of 'co-instructional activities' in subsection 1(1) of the act is amended by striking out 'but does not include activities specified in a regulation made under subsection (1.2)' at the end of the portion after clause (c)."

This is an amendment that had been proposed by the Ontario Public School Boards' Association to address their concerns relating to labour relations.

The Chair (Mr. Shafiq Qaadri): Comments? Ms. Sandals?

Mrs. Liz Sandals: Yes, simply that we really don't want to reopen the whole debate on mandatory co-instructional activities and co-instructional activities as part of striking and so forth. We don't want to replay that debate. We did that about eight or 10 years ago.

The Chair (Mr. Shafiq Qaadri): Are there any further comments with reference to PC motion 3?

Seeing none, we'll proceed to the vote. Those in favour of PC motion 3? Those opposed? I declare PC motion 3 to have been defeated.

Shall section 2 carry? Carried.

I've received no amendments so far for section 3, so we'll consider it now. Shall section 3 carry? Section 3 carries.

We'll now proceed to section 4: PC motion 4, Ms. Witmer.

Mrs. Elizabeth Witmer: I move that section 4 of the bill be amended by adding the following subsection:

"(2) Section 11 of the act is amended by adding the following subsections:

"Consultation

"(2.1) Before the Lieutenant Governor in Council makes a regulation under subsection (2), the minister shall consult with,

"(a) the Ontario Public School Boards' Association;

- ""(b) the Ontario Catholic School Trustees' Association:
- "(c) l'Association des conseillères et des conseillers des écoles publiques de l'Ontario;

"(d) l'Association franco-ontarienne des conseils scolaires catholiques; and

"'(e) any other persons and entities that, in the minister's opinion, have an interest in the proposed regulation.

"Notice

"(2.2) The minister shall give the persons and entities listed in subsection (2) and members of the public notice of the proposed regulation, in the manner he or she

considers appropriate, at least 60 days before the regulation is filed with the registrar of regulations.

"Same

"(2.3) The notice need not contain a draft of the proposed regulation, but shall summarize its content and intended effect.

"Exception

"(2.4) Subsections (2.1), (2.2) and (2.3) do not apply if the regulation, in the minister's opinion,

"(a) is needed to deal with an urgent situation;

"(b) is needed only to clarify the intent or operation of this act or the regulations; or

"(c) is of a minor or technical nature."

This amendment was also proposed by the Ontario Public School Boards' Association. It was intended to establish a formalized commitment for the ministry to consult with trustee organizations whenever regulations arising from this proposed section of the Education Act are considered.

The Chair (Mr. Shafiq Qaadri): Further comments? Mr. Marchese?

Mr. Rosario Marchese: Just some clarification, Mr. Chair: You might be able to answer it, or the clerk or legal counsel. I've got an amendment here that says that we're going to vote against section 4, and the government recommends that they're going to vote against that section as well. I've never seen that before. So this might become a useless debate, I suspect. Is that not the case?

The Chair (Mr. Shafiq Qaadri): I don't think, Mr. Marchese, it's the duty of any of the officials on this side to comment on the utility—

Mr. Rosario Marchese: I would just say that that section is offensive, and it was offensive to most members. It's offensive to me and clearly it's offensive to the government members. I'm surprised that they don't move their own motion, saying, "We're deleting it," rather than, "We're voting against it," which is very clever. I thought it was so clever, how the government members thought on their own to do this. I was going to say—

Mrs. Elizabeth Witmer: It's okay. We don't need to spend a lot of time debating it.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. Sandals?

Mrs. Liz Sandals: I think Mr. Marchese has captured what's going on here: We are in fact proposing that we remove section 4. There were a number of people who appeared before us who said that it was inappropriate to change the duties of democratically elected boards by way of regulation, that that deserves legislation. We agree with them. We will vote against this amendment, but then we will suggest we get rid of the whole section.

The Chair (Mr. Shafiq Qaadri): I think we'll proceed to the vote, then. Those in favour—

Mr. Rosario Marchese: Do you want to withdraw your motion?

The Chair (Mr. Shafiq Qaadri): Those in favour of PC motion—

Mrs. Elizabeth Witmer: I'll withdraw it.

The Chair (Mr. Shafiq Qaadri): Thank you. I have PC motion 4 now withdrawn.

I will now move to NDP notice of motion number 5. Mr. Marchese.

Mr. Rosario Marchese: The New Democratic Party recommends voting against section 4 for many different reasons. I won't take too long, but I found it particularly offensive. Most deputants said some very sharp things against it. Education Action said, "At first glance, Bill 177 appears to be a solution looking for a problem"—which I thought was interesting. It applies to everything. "Section 4," Education Action says, "gives the provincial government carte blanche to fundamentally change school boards as and when they see fit." They argue, "This is a radical departure from previous regulations" and it "puts board members under the direct supervision of the provincial government."

Chris Glover says, "Bill 177 must be changed so that it recognizes the sovereignty of citizens' votes." It "implies that trustees are employees of the provincial government"—this section at least—"rather than elected representatives of the citizens in their communities."

I just wanted to read that into the record, because clearly the government members were also listening to all that. I'm so happy the government members are voting against that section—because you were listening, and that's your message to the minister. This is really, really good. I wanted to say that on the record.

The Chair (Mr. Shafiq Qaadri): Thank you. If there are any further comments on NDP notice of motion—Ms. Witmer?

Mrs. Elizabeth Witmer: As you can see, our motion number 7 is also the same, so we all seem to be in agreement.

Mrs. Liz Sandals: I believe we have unanimous consent.

The Chair (Mr. Shafiq Qaadri): Fine. I'll just need that formally. All those in favour of NDP motion 5? Those opposed?

Mrs. Liz Sandals: Could we get some technical clarification or are you going to put section 4 and we'll all vote against it?

The Clerk of the Committee (Mr. Katch Koch): Procedurally, you would be voting on the section. It's not an actual motion; it's a notice.

Mrs. Liz Sandals: So you're going to call for section 4 and we'll all oppose it?

The Chair (Mr. Shafiq Qaadri): Fine. Correct, Ms. Sandals. So we're not actually technically voting on these notices. We're acknowledging the notices, but we're now moving to the vote on the dreaded section 4.

Those in favour of section 4? Those opposed? Thank you. Section 4 is now defeated.

I'll just inform you, as has been stated already, that motion 6 from the government and PC motion 7 are redundant, and therefore we don't need to consider them.

We'll now proceed to section 5, NDP motion 8.

1430

Mr. Rosario Marchese: I move that section 17.1 of the Education Act, as set out in section 5 of the bill, be amended by adding the following subsections:

"Consultation

"(2) The Lieutenant Governor in Council may not make a regulation under subsection (1) unless, for a period of at least six months before it is made, the minister consulted with parents and guardians, and groups that represent parents and guardians, who would be affected by the regulation.

"Same

"(3) Consultation with parents and guardians in an area for which a parent involvement committee has been established shall be done through the committee."

A few people spoke to that, and Annie Kidder in particular said, "We are happy about the regulation concerning parent involvement committees, but we would like to suggest an amendment to that regulation that ensures that, as the regulation is developed concerning the roles and responsibilities of parent involvement committees, at least six months of consultation with parent communities...."

We moved that motion on the basis of what Annie and many others have said. We think it is reasonable to consult with people before you make any changes. I hope that it finds favour with the government members as well.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. Further comments on NDP motion 8? Ms. Sandals.

Mrs. Liz Sandals: Yes. Certainly we agree that consultation is required. But particularly given that many boards already have parent involvement committees in place, putting in a mandatory period of six months seems not necessarily terribly productive. We're not saying, "No consultation." We're simply saying that the six months before we could file is extra long.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments?

Mr. Rosario Marchese: Recorded vote.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote, then.

Ayes

Marchese.

Nays

Aggelonitis, Albanese, Lalonde, Mitchell, Sandals.

The Chair (Mr. Shafiq Qaadri): Thank you. I declare NDP motion 8 to have been defeated.

Government motion 9.

Mrs. Liz Sandals: I move that section 17.1 of the Education Act, as set out in section 5 of the bill, be struck out and the following substituted:

"Regulations re parent involvement committees

"17.1 The Lieutenant Governor in Council may make regulations respecting parent involvement committees, including regulations requiring boards to establish parent involvement committees and regulations relating to their establishment, composition and functions."

This in fact does not change the intent of the existing clause which it replaces. It simply brings the language in this clause so that it's parallel to the language around school councils. So it's in some ways, I suppose, more by way of a technical amendment to make sure that there is parallel language. What we often find in bills is that if you have similar subject matter and slightly different language, lawyers end up stressing for the next several years over what was the deep, dark motive in having them slightly different. We just simply want to make them parallel and save the stress.

The Chair (Mr. Shafiq Qaadri): Mr. Marchese?

Mr. Rosario Marchese: Yes, just a quick comment: I found it awkward to say, "The Lieutenant Governor in Council may make regulations respecting parent involvement committees...." I'm assuming, Parliamentary Assistant, what it means is that parent involvement committees exist, or should exist, and we respect that. Is that the point of "respecting"? Is that what it means, in terms of respecting parent involvement?

Mrs. Liz Sandals: I think "respecting," in this context, is the way lawyers write "with respect to."

Mr. Rosario Marchese: Oh, "in respect to."

Mrs. Liz Sandals: Yes.

Mr. Rosario Marchese: But I thought-

Mrs. Liz Sandals: Hey, this—

Mr. Rosario Marchese: I thought it was awkward, making regulations "respecting" as opposed to "in respect to" or "with respect to."

Mrs. Liz Sandals: I would defer to legislative

Mr. Rosario Marchese: Does the legal counsel have any comment on that?

Mrs. Liz Sandals: —but I think it's a matter of drafting.

Mr. Doug Beecroft: "Respecting" is the word we usually use in that sense.

Mr. Rosario Marchese: You're kidding.

Mr. Doug Beecroft: I can see that "with respect to" or "in respect of" are similar. But you will find dozens of places in the Education Act where the word "respecting" is used.

Mr. Rosario Marchese: I thought it was awkward. Okay.

Mrs. Liz Sandals: There are all sorts of things in the Education Act which are awkwardly worded—

Mr. Rosario Marchese: Oh, I know.

Mrs. Liz Sandals: —but which lawyers like.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll proceed to the vote. Those in favour of government motion 9? Those opposed? Motion 9 carries.

Shall section 5, as amended, carry? Carried.

No motions received so far for section 6, therefore we'll proceed to the vote. Shall section 6 carry? Carried.

Section 7: government motion 10, Ms. Sandals.

Mrs. Liz Sandals: I move that subsection 43.1(4) of the Education Act, as set out in section 7 of the bill, be amended by striking out "subsection (1)" and substituting "subsection (3)".

This is truly a technical amendment. Somebody, in reviewing the Education Act, found some historic misnumbering of sections dating from some long-past bill, and we're correcting it.

Mr. Rosario Marchese: What is the effect of it? If we kept it that way, what would it do?

Mrs. Liz Sandals: It has to do with grandfathering rights to attend, resulting from 1997-98 jurisdictional changes to Bill 160. The sections are just numbered incorrectly in terms of the proper cross-references.

Mr. Rosario Marchese: So if they're numbered incorrectly, then grandfathering doesn't technically exist. Is that it?

Mrs. Liz Sandais: No, no. We're making it so it works properly. Everybody will end up in the right place if we do this.

Mr. Rosario Marchese: Okay. I'm glad to hear it: an "in the same boat now" kind of thing.

The Chair (Mr. Shafiq Qaadri): Those in favour of government motion 10? Those opposed? Motion 10 carries.

Shall section 7, as amended, carry? Carried.

Section 8: No motions or amendments received so far, so we'll consider it now. Shall section 8 carry? Carried.

Section 9: government motion 11, Ms. Sandals.

Mrs. Liz Sandals: There's a whole series of motions here with respect to section 9. I'm going to do my best to sort of explain them all in advance, if I may, and then we'll start tabling them.

Section 9 has to do with the number of board members. The intent here is to achieve a number of things.

One of the things which the governance review committee heard, although it wasn't a recommendation because it was slightly outside their mandate, is that in school board jurisdictions where the population or the number of electors is declining, because of the way the Education Act is currently set up, you could have the number of trustees on the board automatically declining because of population decreases. Some of the school boards, particularly in rural and northern areas, asked that we freeze their current membership, so that's one of the effects of this.

There are also, however, growth areas where we would want to allow them to continue to use regulation 412, which has the formula in it. We had originally deleted that, but we're putting it back so that in growth areas we can continue to use reg 412.

Then there is a third issue, that there were some what are popularly known as isolate boards which were amalgamated with district school boards in 2009. In some of those cases, the change in population would not warrant an increase in board membership under reg 412, but there may be geographic or other reasons why it would be a good thing to allow the boards to ask the minister to raise the membership.

There's a whole series of things here which allow for those changes to take place. That's just broadly what's going on in section 9. I don't think there's anything terribly politically contentious here. It's just drafting to try and make it work in a reasonable sort of way.

So I move that subsection 9(2) of the bill be struck out. That was the one that was going to get rid of reg 412,

which we now want to keep.

The Chair (Mr. Shafiq Qaadri): Any further comments with regard to those motions? Seeing none, we'll proceed to the vote. Those in favour of government motion 11? Those opposed? Motion 11 is carried.

Motion 12.

Mrs. Liz Sandals: I move that subsection 9(6) of the bill be struck out. This is related to the same reg 412 issue.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll proceed to the vote. Those in favour of government motion 12? Those opposed? Motion 12 is carried.

Motion 13.

Mrs. Liz Sandals: This one is a little bit longer. I move that subsection 9(7) of the bill be struck out and the following substituted:

"(7) Section 58.1 of the act is amended by adding the following subsections:

"Number of members of a district school board

""(10.0.1) Subject to subsections (10.0.2) to (10.1) and to the regulations, the number of members of a district school board, not including members appointed under subsection 188(5), shall be the number of members determined for the board for the purposes of the regular election in 2006.

"Same

"(10.0.2) A district school board whose area of jurisdiction was increased in 2009 may by resolution request the minister to increase its number of members."

Am I reading the new one? Oh, okay. Just let me make a suggestion here. Can I withdraw this one and read the other one, which is just slightly different?

Interjection.

Mrs. Liz Sandals: Okay. I'm just looking here. Down to where I read "Number of members" and "Same"—do you want me to start over again?

The Chair (Mr. Shafiq Qaadri): Yes. I think procedurally, please start again. Just to let the committee know, we're starting with 13.1 from your motions.

Mrs. Liz Sandals: So withdraw 13 and we'll go to 13.1. Thank you.

I move that subsection 9(7) of the bill be struck out and the following substituted:

"(7) Section 58.1 of the act is amended by adding the following subsections:

"Number of members of a district school board

"(10.0.1) Subject to subsections (10.0.2) to (10.1) and to the regulations, the number of members of a district school board, not including members appointed under subsection 188(5), shall be the number of members

determined for the board for the purposes of the regular election in 2006.

"Same

"(10.0.2) A district school board whose area of jurisdiction was increased in 2009 may by resolution request the minister to increase its number of members.

"Same

"(10.0.3) In response to a request by a district school board under subsection (10.0.2), the minister may by order increase the number of members of the board if, in the minister's opinion, the increase is justified by,

""(a) a demographic change in the board's geograph-

ical area of jurisdiction;

"(b) the change in the size of the board's geographical area of jurisdiction; or

""(c) any other circumstances that the minister considers relevant.

"Same

"(10.0.4) A request under subsection (10.0.2) shall not be made after March 15, 2010.

"Same

"(10.0.5) A minister's order under subsection (10.0.3) shall not be made after April 15, 2010.

"'Same

"(10.0.6) An increase under subsection (10.0.3) may be smaller than that requested by the board under subsection (10.0.2)."

So the first one there is the fixing at 2006, the old levels, and then the rest of it is around the isolates that

were amalgamated in 2009.

The Chair (Mr. Shafiq Qaadri): Comments? Seeing none, we'll proceed to the vote. Those in favour of the government replacement motion 13.1? Those opposed? Motion carried.

Shall section 9 carry, as amended?

Mrs. Liz Sandals: Yes.

The Chair (Mr. Shafiq Qaadri): I'll take that as a committee vote.

Shall section 10 carry? Actually, let's do sections 10, 11 and 12 inclusive. Shall sections 10, 11 and 12 carry? Carried.

Section 13: government motion 14, Ms. Sandals.

Mrs. Liz Sandals: I move that section 13 of the bill be struck out and the following substituted:

"13.(1) Subsection 61(2) of the act is amended by striking out 'subsections (3) and (4)' and substituting 'subsections (3), (4) and (4.1)'.

"(2) Section 61 of the act is amended by adding the following subsection:

"Decrease in number of members

"'(4.1) Before the first day of July of an election year, the board of a district school area that has four or five members may, by resolution approved at a meeting of the public school electors, determine that the number of members to be elected shall be decreased to a number not less than three and, at the next following election, that number of members shall be elected."

This goes back to some technical amendments that were put into the Education Act, I'm guessing again back

around 1997 or 1998, which allowed district school boards to voluntarily decrease their memberships but did not do the same for district school area boards—the isolates. So this is just sort of correcting the oversight that occurred historically.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 14? Seeing none, those in favour of government motion 14? Those opposed? Carried.

Shall section 13, as amended, carry? Carried.

We'll proceed to the vote on section 14. Shall it carry? Carried.

Section 15, government motion 15: Ms. Sandals.

Mrs. Liz Sandals: I move that subsection 165(3) of the Education Act, as set out in section 15 of the bill, be amended by striking out "greater than three" and substituting "not less than three".

That relates to the previous amendment, the same technical issues.

The Chair (Mr. Shafiq Qaadri): Thank you. Those in favour of government motion 15? Those opposed? Motion 15 carries.

Shall section 15, as amended, carry? Carried.

We'll proceed now to section 16, PC motion 16. Ms. Witmer.

Mrs. Elizabeth Witmer: I move that subsection 169.1(1) of the Education Act, as set out in section 16 of the bill, be amended by,

(a) adding "jointly with the minister," at the beginning of clause (a); and

(b) adding "jointly with the minister," at the beginning of clause (c).

There was a lot of concern expressed about the fact that the onus for student achievement and effective stewardship of resources seemed to be foisted upon the school boards, so this would look at making sure that the minister continued to still have responsibility. This amendment was proposed by the Ontario Public School Boards' Association, and again, it would make it quite clear that the ministry cannot abdicate its responsibility for student achievement and effective stewardship of education resources.

The Chair (Mr. Shafiq Qaadri): Further comments on PC motion 16? Ms. Sandals.

Mrs. Liz Sandals: Just simply to say that, really, the entire Education Act is about the responsibilities of the minister and the ministry with respect to the education system in Ontario, so the minister's responsibilities are already extensively described.

The Chair (Mr. Shafiq Qaadri): Mr. Marchese.

Mr. Rosario Marchese: I don't agree with the parliamentary assistant, by the way. I do have a few other amendments that speak to this, but I think that the Conservative members are getting at something that many deputants were concerned about. I think that including "jointly with the minister" puts some responsibility on the government as well, because the way it's written, all of the obligations appear to be on boards and trustees. It's quite clear in here. So when the parliamentary assistant says, "Ah, but the minister and the ministry is involved in everything, blah, blah," in terms

of references to the government elsewhere, I think it misses the point. I think that what Mrs. Witmer is trying to do with this is helpful, and it speaks to some of the problems that deputants have around this particular issue. It doesn't solve it, but it gets to it, and I think we should be supporting it.

The Chair (Mr. Shafiq Qaadri): Any further comments on PC motion 16? Those in favour of PC motion 16? Those opposed? I declare PC motion 16 to have been

defeated.

Government motion 16.1.

Mrs. Liz Sandals: I move that clause 169.1(1)(a) of the Education Act, as set out in section 16 of the bill, be struck out and the following substituted:

"(a) promote student achievement and well-being;"

This actually reflects some language that is used in NDP motion number 35, which we will get to. I think there it was laid out in terms of duties of individual trustees. We actually think this is quite good wording but that it should really be attached to the duties of the board, and we are suggesting that it's a much more general statement about student achieving which should replace the specific reference to regulation.

The Chair (Mr. Shafiq Qaadri): Ms. Witmer.

Mrs. Elizabeth Witmer: You know, I have some trouble with this bill and this particular section. I guess as a former board chair myself, I always assumed that I had been elected to do what I could to promote student achievement and well-being, so I don't have a problem with it being here. But I would go back to the other amendment: I am concerned that in some respects-and this was certainly expressed by the deputants—much of this bill is devoted to almost an abdication, I say again, on the part of the minister and the ministry for any responsibility regarding student achievement and student outcomes.

1450

I already heard recently about boards that were being encouraged to raise marks because this was what the province wanted. I certainly hope that this bill isn't going to promote student achievement and we find students are given marks that obviously don't reflect their abilities.

The Chair (Mr. Shafiq Qaadri): Mr. Marchese.

Mr. Rosario Marchese: The government knows, the minister knows, the ministry knows and the government members sitting in this committee know that almost every deputant, parent and trustee spoke about the need for the government to define student achievement—we attempt to do that in one of the amendments that I will introduce a bit later—but the government nowhere talks about what student achievement is or means, and they make no effort to try to define it. Most of the folks who came said, "Please define it." I'm amazed and surprised that the government hasn't made an attempt to do that. I think I know why: because student achievement is defined by EQAO test scores, and that's the extent of it. They don't want to say it, but that's what it is. If they disagree with my interpretation and the interpretation of many—that student achievement is nothing other than tied to EQAO test scores—they should tell us.

The Chair (Mr. Shafiq Qaadri): Ms. Sandals.

Mrs. Liz Sandals: I would just simply suggest, given that what we're doing is striking out the reference to the regulation and making this a more general statement about promoting student achievement and well-being, that in fact we have been listening to some of those concerns.

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 16.1? Those opposed? Motion 16.1 is carried.

Government motion 16.2.

Mrs. Liz Sandals: I move that clause 169.1(1)(d) of the Education Act, as set out in section 16 of the bill, be amended by adding "and" at the end of subclause (i) and by striking out subclause (ii).

That's because, given the amendment we just made,

subclause (ii) is superfluous.

The Chair (Mr. Shafiq Qaadri): Thank you. Those in favour of government motion 16.2? Those opposed? Motion 16.2 is carried.

PC motion 17, Ms. Witmer.

Mrs. Elizabeth Witmer: I move that subsection 169.1(1) of the Education Act, as set out in section 16 of the bill, be amended by adding the following clause:

"(d.1) monitor and evaluate the effectiveness of policies developed by the board under clause (d) in achieving the board's goals and the efficiency of the implementation of those policies;"

Again, this is an amendment that was proposed by the Ontario Public School Boards' Association. Their desire was to have this clause added to the list of new responsibilities that was being given to boards.

The Chair (Mr. Shafiq Qaadri): Ms. Sandals.

Mrs. Liz Sandals: We think this is a very good amendment, so we will be supporting it.

The Chair (Mr. Shafiq Qaadri): Thank you. Proceeding to the vote: Those in favour of PC motion 17? Those opposed? PC motion 17 passes.

Government motion 18.

Mrs. Liz Sandals: I move that clause 169.1(1)(e) of the Education Act, as set out in section 16 of the bill, be amended by striking out "multi-year plans" and substituting "a multi-year plan".

You will see that there are a whole bunch of amendments where we are moving from "plans" to "plan," because the way the bill was originally worded, it looked like we were requiring multiple multi-year plans, which did not seem sensible.

The Chair (Mr. Shafiq Qaadri): Comments? Government motion 18: Those in favour? Those opposed? Motion 18 is carried.

Government motion 19.

Mrs. Liz Sandals: I move that clauses 169.1(1)(f) and (g) of the Education Act, as set out in section 16 of the bill, be struck out and the following substituted:

"(f) annually review the plan referred to in clause (e) with the board's director of education or the supervisory officer acting as the board's director of education; and

"(g) monitor and evaluate the performance of the board's director of education, or the supervisory officer acting as the board's director of education, in meeting,

"(i) his or her duties under this act or any policy, guideline or regulation made under this act, including duties under the plan referred to in clause (e), and

"(ii) any other duties assigned by the board."

What we're doing here is making sure it's clear that the board is responsible for monitoring the implementation of the plan but also more broadly the performance of the director of education, not simply the plan. I believe this was proposed by the Toronto District School Board governance committee.

The Chair (Mr. Shafiq Qaadri): Comments on government motion 19? Seeing none, those in favour of government motion 19? Opposed? Motion 19 carries.

NDP motion 20.

Mr. Rosario Marchese: I move that section 169.1 of the Education Act, as set out in section 16 of the bill, be amended by adding the following subsection:

"(3.1) Every board shall annually commission an independent audit to determine whether the government of Ontario has provided the board with adequate resources to ensure improved student outcomes and the board shall make the audit report available to the public."

In my view, this is about real accountability on a board-by-board basis. It's about ensuring that the ministry gives the board more than just words and funding promises that may take years to be realized, if at all. The ministry has to commit to full, predictable, transparent long-term funding instead of the rob Peter to pay Paul that we have now. I want to reiterate a point that Mr. John Campbell, the chair of the Toronto board, made: "We urge the committee to add a section to the bill that ties the board's accountability to an obligation by the minister to ensure that the resources referred to in (b) are adequate to achieve the outcomes in (a) and deliver the programs in (c). This obligation would require the ministry to consider local circumstances beyond a board's control that affect student outcomes—circumstances like poverty, student hunger, cultural challenges, remote communities, lack of community cohesion, available social supports, immigration challenges and language barriers. Absent this obligation, it is possible that the ministry may over-promise what a board can deliver with the resources offered."

I thought this was clear and very, very concise in terms of the problems boards have in meeting the obligations that the government is imposing on them.

OPSBA said, "In this particular section, we emphasize that a critical factor in a board's capacity to meet its requirements is having adequate and appropriate funding from the ministry to cover all the obligations for training school boards as well as program, policy and political support to meet the full range of needs of the children and youth for whom we carry a shared responsibility."

I think this motion is critical. This is the way to make sure that governments are the real partners. If you don't support this, it means you're putting all of the obligations and responsibilities on boards to achieve your political goals as a government, rather than the board's ability to deliver on what you asked them to do and to deliver without adequate resources.

My motion attempts to help the boards deal with that, and it makes sure that governments are real partners in what it is that they're trying to do.

1500

The Chair (Mr. Shafiq Qaadri): Comments?

Mrs. Liz Sandals: Just looking at this amendment, it talks about every board, so 72, or, if you're counting the DSABs, even more than that, and it says "annually commission an independent audit." So we're talking about 72 or more independent audits each and every year, which would seem to be an excessive number of audits going on.

The Chair (Mr. Shafiq Qaadri): Mr. Marchese.

Mr. Rosario Marchese: That's the point. It is a cost to boards, no doubt, but it will force the government to be able to respond to the adequacy or inadequacy of the money they get from governments. The idea is to do it annually so that the government is held accountable every year and not just once. That's exactly the point. Even though it's a cost to the boards to do the audit—and I understand it's money they may not have—if it reveals that there are funding gaps from the government and then it commits the government to have to provide adequate dollars, those audits are worth it, in my view.

On a recorded vote, monsieur le Président.

Le Président (M. Shafiq Qaadri): Merci. Votre vote procède maintenant.

Aves

Marchese.

Navs

Aggelonitis, Albanese, Lalonde, Mitchell, Sandals.

The Chair (Mr. Shafiq Qaadri): NDP motion 20 is defeated.

Government motion 21.

Mrs. Liz Sandals: I move that section 169.1 of the Education Act, as set out in section 16 of the bill, be amended by,

- (a) striking out "plans referred to in clause (1)(e) include" in subsection (3) and substituting "plan referred to in clause (1)(e) includes";
- (b) striking out "plans" in clause (4)(a) and substituting "plan"; and
- (c) striking out "plans" in clause (4)(b) and substituting "plan".

The Chair (Mr. Shafiq Qaadri): Thank you. Comments on government motion 21? We'll proceed to the vote. Those in favour of government motion 21? Those opposed? Motion 21 is carried.

NDP motion 22.

Mr. Rosario Marchese: I move that section 169.1 of the Education Act, as set out in section 16 of the bill, be amended by adding the following subsections:

"Standing Committee on Education Finance

"(6) A standing committee of the Legislative Assembly known as the Standing Committee on Education Finance is hereby established.

"Mandate

"(7) The Standing Committee on Education Finance shall convene annually to consider and report on whether the resources entrusted to boards are adequate to meet their obligations."

This is designed—another motion similar to the previous one—to guarantee accountability at the provincial level. What we have at the moment is a rob-Peter-to-pay-Paul approach to education in Ontario, which forces school boards to run some programs at the expense of others while the government claims to be doing both. It's critical that parents can match the provincial funding with the expectations to make sure that the funding is in fact being provided and not just announced and reannounced every time a need is identified.

What we're doing with this section is exactly what the Liberal members, through Mr. McGuinty and Mr. Kennedy, the then minister—at least after 2003 declared that they would do if they got elected in 2003. It's a promise that the Liberals made in the 2003 election and never implemented. The rationale was the same rationale I am putting forth today, that what the Conservatives had been doing was funding education inadequately, and they, through Mr. Kennedy and Mr. McGuinty, were going to have a standing committee of the Legislative Assembly known as the Standing Committee on Education Finance in order to do an annual review of what monies were going out to boards. I supported the Liberals when they proposed this in opposition; I'm trying to encourage the Liberals while they're in government to do this. I think it's a way to hold themselves accountable as well.

It's a way to show boards that they are real partners. It's a way to show boards that they really want to make sure that they, like Liberal members, want an open process where these things are debated, where we in opposition can question the minister—including the government members—and have a full accounting of where the money is going. We think this is a good, transparent process that would help all of the education players. It would make them feel good about what the government is doing—or say to us that maybe what the government is doing is inadequate and we need to help them to make it more adequate.

I think this is a motion that Liberals should support, because they were the ones who moved it prior to the 2003 election.

The Chair (Mr. Shafiq Qaadri): Thank you. Comments on NDP motion 22? Ms. Sandals.

Mrs. Liz Sandals: First of all, I'm not sure that this is actually in order in terms of whether we can amend the Education Act to set up a standing committee of the

Legislature, or whether in fact there's some other place that you go to set up a standing committee of the—

Mr. Rosario Marchese: Where should we go?

Mrs. Liz Sandals: Well, it seems to me that that's something that normally comes up in the rules of the Legislature, in the standing orders.

The Chair (Mr. Shafiq Qaadri): I'll have legal

counsel weigh in.

Mr. Rosario Marchese: Does the parliamentary assistant agree with the intent of the motion, even if it were out of order?

The Chair (Mr. Shafiq Qaadri): Before that, I'll just

ask legal counsel to weigh in on the question.

The Clerk of the Committee (Mr. Katch Koch): Just a quick comment: Traditionally, standing committees are set up by the Legislature with the standing orders. By law, I don't know. I have to refer to leg counsel.

Mr. Doug Beecroft: The only limitations, really, on the Legislative Assembly's powers to pass legislation are in the Constitution, either in the charter or in the distribution of powers between the federal government and the provincial government. So we have a Legislative Assembly Act in Ontario that governs the Legislative Assembly. It's within the power legally of the Legislative Assembly to pass bills governing the Legislative Assembly.

Mr. Rosario Marchese: Sure. But is this motion out

of order?

The Chair (Mr. Shafiq Qaadri): I think we're probably all pretty knowledgeable about that—

Mr. Doug Beecroft: So I don't think this motion is

out of order.

The Chair (Mr. Shafiq Qaadri):—but just reference to the specific point that's being raised.

Mrs. Liz Sandals: Okay. I would just say that I think that this is the sort of thing that if you're going to be setting up standing committees, this is something that the House leaders of all the parties should be dealing with, as opposed to just slipping it in through the Education Act.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr.

Marchese.

Mr. Rosario Marchese: We haven't been able to slip it in anywhere, because we have been stymied by the government every step of the way. The government members have no interest in this, clearly. Legal counsel has said that this motion is in order, so I'm just going to call for, of course, a recorded vote so that we can see whether the government members agree or disagree with this.

The Chair (Mr. Shafiq Qaadri): Thank you. A recorded vote, unless there are further comments.

Ayes

Marchese.

Navs

Aggelonitis, Albanese, Lalonde, Mitchell, Sandals.

The Chair (Mr. Shafiq Qaadri): I declare NDP motion 22 to have been defeated. I would also thank Ms. Aggelonitis—five syllables—for voting in that last round.

Shall section 16, as amended, carry? Carried.

We'll proceed to consider a block vote on sections 17 to 22 inclusive, as we received no amendments or motions. Shall sections 17 to 22 pass? Carried.

We proceed now to section 23, NDP motion 23. Mr. Marchese.

Mr. Rosario Marchese: I move that section 23 of the bill be amended by adding the following subsection:

"(2) Section 208 of the act is amended by adding the following subsection:

"(8.1) A person shall not be elected as chair or vicechair if he or she has a spouse, child, parent, brother or sister who is currently employed by the board."

1510

I think this is one of the few amendments that I proposed, or at least that the government members are about to consider, that deals with the actual governance. I really thought that this bill was actually going to deal with governance issues connected to what trustees do or shouldn't do or where the conflicts are, and the government has proposed very little by way of governance of school trustees.

This is one motion that we think is apropos, and I suspect a whole lot of people agree with the motion that I have put forth. I know that there's probably disagreement about potential conflict of interest with respect to trustees in general and having a family member in the board and therefore having to declare a conflict. I'm very cautious of that, too, because if that's the case, most trustees would be subject to a conflict every day and it would render them—it would be impossible for them to do the job.

The Star editorial made some good points around this, because if there were such a conflict with trustees and we passed that conflict down to the provincial level, they made the argument that the Premier has a wife who is a teacher and therefore should declare a conflict on every issue connected to education that the government legislates. We know that that does carry it a bit too far. At some point, we're going to have to review what is really a conflict of interest for trustees in general in order to allow them to do the job well.

But this is one area where I think we might agree, because I'm not talking about all trustees; I'm talking about the chair of the board. It says: "A person shall not be elected as chair or vice-chair if he or she has a spouse, child, parent, brother or sister who is currently employed by the board." I think the chair has greater obligations and responsibilities that subject him or her to greater transparency of the rules.

I think it's a governance issue that should be dealt with, and I put it forth for the consideration of this committee.

The Chair (Mr. Shafiq Qaadri): Thank you. Comments?

Mrs. Liz Sandals: As Mr. Marchese has noted, the whole issue of what is and isn't a conflict of interest is covered by the Municipal Conflict of Interest Act. While there may be ways in which that is problematic and should perhaps be reviewed, I think the core issue here, in terms of the way the Education Act is currently structured, is that the people who are named here are, according to the Education Act, qualified to be elected as trustees. To exclude them from participating as chairs or vice-chairs of the board seems contradictory if, on one hand, you're going to say it's acceptable for this person to be elected as a trustee, but then disallow them from taking on a possible role.

I would also note that this is probably just plain impractical, because this clause applies not only to district school boards; it also applies to district school area boards, the isolates, which often have only three trustees, and often some of those trustees will be people who are in some way or other related to somebody who participates in the education sector. So, in fact, in those very small boards, you could actually make it practically impossible to function, so we will be opposing this.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments on NDP motion 23? Seeing none, we'll proceed to the vote. Those in favour of NDP motion 23? Those opposed? NDP motion 23 is defeated.

Shall section 23 carry? Carried.

Shall sections 24 and 25 carry? Carried.

Section 26, government motion 24: Ms. Sandals.

Mrs. Liz Sandals: I move that section 218.1 of the Education Act, as set out in section 26 of the bill, be amended by renumbering clause (a) as clause (a.1) and by adding the following clause:

"(a) carry out his or her responsibilities in a manner that assists the board in fulfilling its duties under this act, the regulations and the guidelines issued under this act, including but not limited to the board's duties under section 169.1;"

The rationale for this amendment is, when we got into looking at the code of conduct, it was pointed out that there might be some confusion around how other trustees would relate to a motion that didn't comply with the Education Act. The suggestion was made that we should actually include in the duties of trustees the fact that they are required to comply with the act in terms of carrying out their responsibilities. So it was felt that to clearly state that, given the commentary that we heard during the hearings, would be helpful, to put that upfront in terms of the duties.

The Chair (Mr. Shafiq Qaadri): Mr. Marchese?

Mr. Rosario Marchese: Given what we heard, I would have thought the government would do much more than this. We heard nothing but critical remarks on this section, by trustees and everybody else. I don't know what you heard, but this is the minimalistic of things that you could be proposing to be helpful. It's just so meaningless. I put that on the record.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 24? Seeing none, we'll proceed to

the vote. Those in favour of government motion 24? Those opposed? Motion 24 carried.

Government motion 25: Ms. Sandals?

Mrs. Liz Sandals: I move that clause 218.1(b) of the Education Act, as set out in section 26 of the bill, be amended by striking out "plans" and substituting "plan".

The Chair (Mr. Shafiq Qaadri): Any further comments? We'll proceed to the vote. Those in favour of government motion 25? Those opposed? Motion 25 carried.

PC motion 26.

Mrs. Elizabeth Witmer: I move that clause 218.1(c) of the Education Act, as set out in section 26 of the bill, be amended by striking out "supporters of the board" and substituting "members of the community".

Again, this amendment was brought forward in order to ensure and support trustees in the work that they do by bringing forward concerns from people in the community. Again, it was an amendment that had been supported by OPSBA.

The Chair (Mr. Shafiq Qaadri): Further comments on PC motion 26?

Mrs. Liz Sandals: This goes to the duties of individual trustees, and in the Education Act, when we talk about "supporters of the board," we're talking about the folks-whatever the board is or whichever the board isthose people who have chosen to support that particular board with their tax dollars. So it seems to me that when we are talking about the legal duty of the trustee that in fact it is to advocate on behalf of the parents, the students and the supporters of the board. The supporters of the board are the people who elected them. So it isn't that the term "supporters" has its normal English meaning in this case—that doesn't preclude the board, as a corporate entity, from hearing from people who don't happen to be supporters in the technical sense, but in terms of the individual trustee's duty to advocate and represent, it clearly is to the people who elected them.

The Chair (Mr. Shafiq Qaadri): Any further comments on PC motion 26? Seeing none, we'll proceed to the vote. Those in favour of PC motion 26? Those opposed? I declare PC motion 26 has been defeated.

NDP motion 27: Mr. Marchese.

Mr. Rosario Marchese: I move that clause 218.1(d) of the Education Act, as set out in section 26 of the bill, be struck out.

Clause (d) says that the duties of boards include, "support the implementation of any board resolution after it is passed by the board."

I found this whole section very offensive, generally and very specifically, on almost each one of them, and this was particularly difficult for me and difficult for most of the trustees who came here, because what it says is that they will support the implementation of any board resolution. I just think it's wrong. I think that elected trustees who have to run in elections every four years now—it used to be three and it used to be two—are elected officials, and if they disagree with the board, they disagree with the board. It should be okay, and that

disagreement should be reflected publicly. If it reflects the fact that a trustee is representing a whole community, it should be seen as such. If it represents the person's own view, that's fine too; that's why they're elected. They are not servants of the government, they are not nominated by the government; they are elected, and as such it is their duty to be able to represent the views of their constituency in the way that they see fit. If they want to disagree with a board resolution, they should before and after a resolution has been passed by a board. 1520

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments on NDP motion 27? Ms. Sandals.

Mrs. Liz Sandals: I would draw your attention to government motion 29, where we are suggesting that this particular clause be worded to say "uphold the implementation," which in fact if memory serves me, is the wording that was suggested in the governance review committee. I think there were some of the trustees' associations that said, "No, what we mean here is 'uphold implementation." There is no intent here that individual trustees cannot speak out against or ask for reconsideration of resolutions with which they disagree. The issue here is that once the collective board has agreed to a resolution, then the board does need to go ahead and uphold the implementation of that resolution. So we will be voting against striking out this particular clause.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Marchese and then Ms. Witmer.

Mr. Rosario Marchese: I'm just going to make my argument now. I find "upholding" equally offensive as "supporting." It's the same thing, if not worse, in my mind. The intent is very clear: The parliamentary system is wrong. Once the vote has been passed by a board, it says the trustee "shall support the implementation of any board resolution." It says "shall." It's very clear what they can and cannot do, can and cannot say. The punitive elements of this are contained in the bill as well in terms of disagreement with a board resolution. It's very clear. "Supporting" and "upholding" are one and the same. They're both equally bad. For the government to say "upholding" is a nicer word and someone else recommended it, and therefore it's more acceptable, is wrong. They're both wrong. The government is profoundly wrong on this.

These are elected trustees, and if a board passes a resolution, I don't have to support it as an elected trustee. I don't think I have to uphold it; it's not my duty to uphold it. You passed it as a board, but a trustee can continue to disagree with that and go on his or her merry way with whatever it is that he or she wants. That is the duty of an elected person to do. They are both wrong; the words are both bad. I make this argument now, and I will vote against it when it comes.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. Witmer.

Mrs. Elizabeth Witmer: We have a similar motion, so I would be supporting Mr. Marchese.

Mr. Rosario Marchese: I want a recorded vote.

Aves

Jones, Marchese, Witmer.

Nays

Aggelonitis, Albanese, Lalonde, Mitchell, Sandals.

The Chair (Mr. Shafiq Qaadri): NDP motion 27 defeated.

We'll proceed to PC motion 28. PC motion 28 I declare out of order, as it's an exact duplicate. We'll proceed to government motion 29.

Mrs. Liz Sandals: I move that clause 218.1(d) of the Education Act, as set out in section 26 of the bill, be amended by striking out "support" at the beginning and substituting "uphold".

This would have the effect that it would say to "uphold the implementation." I'm going to go back to the testimony of Mr. Matlow before the committee because he raised the issue himself. He was on record as opposing the creation of Afrocentric schools. There is nothing here in the wording of this that would prevent that particular trustee from continuing to speak out against the implementation of Afrocentric schools, of bringing a motion of reconsideration if he thought that was useful. But upholding the implementation means that when it comes to actually creating that school, which has been approved by resolution of the board, the individual trustee cannot block the implementation of things that have been duly approved by the board. That is the effect which we want to achieve and which the governance review committee recommended.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Marchese.

Mr. Rosario Marchese: It's a useless motion; it's a useless wording change. The parliamentary assistant claims that nothing prevents a trustee from saying, "I disagree with what the board did." With the word "uphold" now, that individual cannot block—what can one individual do? How can one individual block anything? In my view, it's the duty of the trustee to be able to do whatever he or she wants to be able to put forth his or her disagreement with a bill—by way of a motion, by way of a public statement, by way of doing whatever he or she wants in his or her ward or at the board level.

If this has no effect on the trustees whatsoever, then why do you have it? Why is it here? There is an obligation on trustees and the obligation legally, in my mind, is very clear and the language is very strong on this.

What the parliamentary assistant is saying is contradictory. If it has no weight, then we don't need this motion here.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. Witmer.

Mrs. Elizabeth Witmer: We support this. In fact, we have a similar motion here. I know that the Ontario Public School Boards' Association, after taking a look at this, did believe that trustees should be asked to uphold

decisions that were made rather than support them. They should be in a position where they could explain and communicate the decisions, and they should also be able to explain why they may or may not have been able to support the decision at the time.

However, I think if you take a look at this, if you're going to leave this in and you strike out "support" and put in "uphold," the new language balances the freedom of expression, the opportunity for the trustee to speak out about why they did or didn't support the decision.

However, there is a responsibility on the part of the trustee, once the decision is made, to uphold that. I think that's very important.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Rosario Marchese: Recorded vote.

Ayes

Aggelonitis, Albanese, Jones, Lalonde, Mitchell, Sandals, Witmer.

Nays

Marchese.

The Chair (Mr. Shafiq Qaadri): I declare government motion 29 to have been passed.

PC motion 30, as you know, is a duplicate, so it's withdrawn—out of order.

PC motion 31.

Mrs. Elizabeth Witmer: I move that clause 218.1(e) of the Education Act, as set out in section 26 of the bill, be struck out and the following substituted:

"(e) entrust the day to day management of the board to the director of education:"

This replaces, I guess, a part of the bill which was rather negative. It did say here "refrain from interfering in the day to day management of the board by its officers and staff;". It was calling upon members of the board to do this, and I think this would be more positive language and it would communicate the same message. In other words, it basically is saying, "Don't interfere. Entrust the day-to-day management of the board to the director of education."

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments? Ms. Sandals.

Mrs. Liz Sandals: You'll note that there is a government motion number 37. We are agreeing on the intent here, which is that we need to word this in a more positive way: "entrusting the day-to-day management of the board." The question here is, how do we get that correctly worded?

1530

I notice that in the PC motions, there is one that mentions just the director of education, and there's another that mentions director of education and senior staff. Our motion talks about entrusting the day-to-day management of the board to its staff through the director of education, which I think accurately reflects the flow of account-

ability. So we agree with the intent of 31 and 32, but we will oppose them so we can get the number 37 wording, which is the correct accountability chain, into the books.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments on PC motion 31? Seeing none, we'll proceed to the vote. Those in favour of PC motion 31? Those opposed? PC motion 31 is defeated.

PC motion 32, Ms. Witmer.

Mrs. Elizabeth Witmer: I would withdraw this, because it appears that the government is going to be introducing a motion which captures the essence of making sure we appropriately identify who should be in charge of the day-to-day management: the director and staff. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you. PC motion 32 is withdrawn.

NDP motion 33, Mr. Marchese.

Mr. Rosario Marchese: I think this motion is a better one, actually.

I move that clause 218.1(e) of the Education Act, as set out in section 26 of the bill, be struck out.

This is an incredibly offensive piece of work that the government has introduced here. It says to "refrain from interfering in the day to day management of the board by its officers and staff...." It's the government's choice of words that speaks volumes about their attitude towards trustees and the parents they represent. If the parents who elected a trustee have concerns about the day-to-day management of the school their child attends, then the trustee has every right to make inquiries and work on behalf of the parents. That is their obligation. That's their duty as trustees.

So when the Conservative member and the government member introduce a motion that says to "entrust the day to day management of the board to the director of education and senior staff"—which is the way it is. I mean, principals manage the affairs of the school. Superintendents, who are their superiors, are subject to the same kinds of obligations, and the director is. We understand that that's the day-to-day management. We know this. So I'm not quite sure what it says. If this is the motion that the government wants now to introduce, does it mean the trustees have the right, then, to inquire or make inquiries about a problem that a parent brings forward to an MPP or a trustee?

I know Conservative members had this issue around sexual abuse when we dealt with it, where a lot of trustees were not very responsive to it and should have been, and the members had to raise this issue in committee, as I did. There is an obligation on trustees to represent parents when something goes wrong, and if a trustee doesn't have the power to represent a parent, who does? If a trustee cannot intervene or interfere or get involved—whatever language—to be able to represent a parent, what do they do? What is their role?

I was just amazed at how the government could nonchalantly introduce this and think nothing of it. I was, quite frankly, amazed at the Liberal members, including so many who were school trustees and former teachers, and parents, of course. I just have to tell you, I think this whole thing should be scrapped, should be eliminated. That's why we put it forth.

The Chair (Mr. Shafiq Qaadri): Comments on NDP motion 33? Ms. Sandals.

Mrs. Liz Sandals: This removes the—we agree that the idea needs to be more positively worded. I do not agree, nor did the governance review committee agree, that it was the responsibility of trustees, the elected officials, to step in and micromanage schools. It is the responsibility of trustees to set policy. It is the responsibility of trustees, when they get complaints from parents, to work with the senior staff to try to have those issues resolved. It is not the responsibility of trustees to micromanage on a day-to-day basis.

The Chair (Mr. Shafiq Qaadri): Further comments? Ms. Witmer.

Mrs. Elizabeth Witmer: I would agree with Ms. Sandals. Based on my own personal experience, trustees do have a role, and their role isn't to manage on a day-to-day basis, but regrettably, there are individuals who sometimes do so.

There's a chain of command that you need to follow. You have a responsibility to represent the constituents who elected you, but that doesn't mean that you go in and, for example, attack a teacher. You would approach the superintendent or the principal and you would look for a resolution to the problem or the conflict that way, rather than barging into a classroom and deciding you're going to do it.

The Chair (Mr. Shafiq Qaadri): Any further comments? Those in favour of NDP motion 33? Those opposed? NDP motion 33 is defeated.

NDP motion 34.

Mr. Rosario Marchese: Mr. Chair, to avoid confusion, I would like to deal with 34, 35 and 57 together rather than separately, otherwise it will not make sense.

The Chair (Mr. Shafiq Qaadri): If that's the will of the committee, I think you have agreement for that, so 34, 35 and then 57.

Mr. Rosario Marchese: Shall I read them all? The Chair (Mr. Shafiq Qaadri): One at a time.

Mr. Rosario Marchese: Right, one at a time, but read all three of them?

The Chair (Mr. Shafiq Qaadri): No. I think the intent, Mr. Marchese, probably in the English language and by precedent, is that one at a time means one at a time.

Mr. Rosario Marchese: That's so very clever.

I move that section 26 of the bill be amended by adding the following subsection:

"(2) Section 218.1 of the act, as enacted by subsection (1), is amended by striking out 'and' at the end of clause (e) and by adding the following clause:

"(e.1) maintain focus on student achievement and well-being; and"

This motion is related to section 26 of the bill—clauses 218.1(e) and (f) of the Education Act—and section 54 of the bill.

Mr. Chair, in your capacity as Chair, shall I just make the argument now for all three subsections that I will be introducing?

The Chair (Mr. Shafiq Qaadri): You're welcome to do that. The vote will be individual, obviously.

Mr. Rosario Marchese: Okay. The government proposes that all partners have a role in enhancing student achievement, and we want to guarantee that all partners will have a role in defining student achievement.

Currently, the government, we say, is obsessed with standardized test scores as the primary measure of student success. There are a growing number of educators, parents and stakeholders who are very concerned about this extremely limited view of student success. The stated goal of closing gaps in student achievement is admirable if we are offering our students a wide range of alternative programming which recognizes the unique and varied skill sets of our students and their individual learning styles.

The government's current position is that closing gaps in student achievement means orchestrating and fabricating higher EQAO scores at the expense of all other learning opportunities. The government's limited definition of success and the perceived political advantages of driving up test scores are the most serious threats in Bill 177, and parents must exert an influence on the definition of student success.

Here's what a deputant from Windsor-Essex said:

"The purpose of the education system in Ontario is more complex than just higher student achievement. Not including socialization or soft-skills development does a disservice to those students who, for whatever reason, cannot perform well on standardized tests.

"High achievement levels and closing the gaps in achievement create a two-tiered system across the province: schools that do well and students who" don't.

Anthony Marco: "With the term 'student achievement' ready to be cast in stone, or at least the Education Act anyway, as a key goal for all students, education workers and now trustees across Ontario, one should have a concrete definition in order to set goals and know the potential risks for job performance."

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Cassie Bell said, "Bill 177 has not defined student success, and that is a big problem. I believe the reason it is not defined is because not everyone can agree, which I completely sympathize with. It's not easy to designate one student a success and another child unsuccessful or to decide what counts in success, and what doesn't. Does a child with a mental health issue who makes it to school four out of five days count as successful or unsuccessful? What about a poor child who is hungry and can't focus to learn to read but doesn't act out in class? Is he unsuccessful because he has difficulty learning or is he successful for his good behaviour? What about the child whose family has been ravaged by domestic abuse, living in shelters, has moved schools three times in one year and who, slightly distracted, does very poorly on her grade 3

EQAO assessment? Is she successful for just being there or is she unsuccessful for her results?"

We say: Do not use EQAO test results as the definition of student success. Do explore and expand the meaning of success within the context of the whole child. Do not hold a school board accountable for delivering something that cannot be defined or adequately funded within this model—which leads me to my last point: governance, curriculum and funding.

Just to point out, in motion 57 on the bill, what we are saying is, "A proclamation under subsection (2) shall not be issued unless the Minister of Education is satisfied that the government of Ontario has engaged in comprehensive consultations to develop a broad definition of what constitutes student achievement and well-being that will recognize the importance of indicators other than the results of tests developed by the Education Quality and Accountability Office."

It's this motion that I will be reading later that determines the language on pages 34 and 35. The arguments that I made and the motion that I will move on page 57 are what I'm speaking to.

The Chair (Mr. Shafiq Qaadri): Comments on NDP motion 34, which is before us now? Ms. Sandals.

Mrs. Liz Sandals: I must admit I'm a little bit confused, because when we moved that we add "promote student achievement and well-being" to the duties of the board—which is where we believe it more correctly goes because it's a collective responsibility as opposed to an individual duty of a board member—I thought that the NDP argument was that this was quite horrid wording and we wouldn't want to include this in the bill. So I'm a little bit surprised that you're now suggesting that we put "maintain focus on student achievement and well-being" as an individual responsibility rather than a collective board responsibility. We will vote against this because we already put it as a board responsibility, which is where we think it belongs.

Mr. Rosario Marchese: I think she misunderstands what this motion does. What we're asking the government to do—we know that she likes this language; we know that the government likes the language that they have proposed. What we're saying is that this bill will not pass until the government of Ontario is engaged in comprehensive consultations to develop a broad definition of what constitutes student achievement and well-being. That's what I'm asking the government and the parliamentary assistant to do, that they define what constitutes—we don't have to worry about that, Mr. Chair. I don't know if I need to make my argument again. Did the parliamentary assistant hear my argument?

Mrs. Liz Sandals: Yes.

Mr. Rosario Marchese: I see. Okay, then. I was just saying that she misunderstood, clearly, what I'm trying to get at.

The Chair (Mr. Shafiq Qaadri): Thank you. Are there any further comments on NDP motion 34?

Mrs. Liz Sandals: Just to note that I hear what you're saying but what I'm reading is that we add this specific

clause, "maintain focus on student achievement and wellbeing," to the list of duties of individual board members. That's what the motion that is before us says. So I hear what you're saying but that's not what I'm reading.

The Chair (Mr. Shafiq Qaadri): If there are no further comments, we can proceed to vote on NDP motion 34. Those in favour? Those opposed? NDP motion 34 is defeated.

NDP motion 35, Mr. Marchese.

Mr. Rosario Marchese: I'll just read it, but will not make any additional arguments.

I move that section 218.1 of the Education Act, as set out in section 26 of the bill, be amended by adding "and" at the end of clause (e) and by striking out clause (f).

These suggestions were made by legal counsel in terms of making sure that it is in conformity with a motion I'm making on page 57.

The Chair (Mr. Shafiq Qaadri): Further comments? Those in favour of NDP motion 35? Those opposed? NDP motion 35 is defeated.

I declare NDP motion 57 out of order due to defeat of the preceding two amendments. We'll therefore proceed to NDP motion 36, Mr. Marchese.

Mr. Rosario Marchese: I move that clauses 218.1(e), (f) and (g) of the Education Act, as set out in section 26 of the bill, be amended by,

(a) adding "and" at the end of clause (e);

(b) striking out "and" at the end of clause (f); and

(c) striking out clause (g).

The Chair (Mr. Shafiq Qaadri): Comments?

Mrs. Liz Sandals: Yes. Striking out clause (g) would remove the requirement for board members to comply with their board's code of conduct, and I would note that the governance review committee actually specifically asked for legislation that would require trustees to comply with their board's code of conduct. So we will not be voting for motion 36.

The Chair (Mr. Shafiq Qaadri): Those in favour of NDP motion 36? Those opposed? Motion 36 is defeated.

Government motion 37, Ms. Sandals.

Mrs. Liz Sandals: This goes back to the discussion we were having before.

I move that clause 218.1(e) of the Education Act, as set out in section 26 of the bill, be struck out and the following substituted:

"(e) entrust the day to day management of the board to its staff through the board's director of education;"

We've already discussed the fact that it's important that this be worded in a more positive manner but that we do capture the idea that day-to-day management is the responsibility of the staff.

The Chair (Mr. Shafiq Qaadri): Further comments? Those in favour of government motion 37? Those opposed? Motion 37 is carried.

Government motion 38, Ms. Sandals.

Mrs. Liz Sandals: I move that section 218.2 of the Education Act, as set out in section 26 of the bill, be struck out and the following substituted:

"Code of conduct

"218.2(1) A board may adopt a code of conduct that applies to the members of the board.

"Minister's regulations

"(2) The Minister may make regulations,

"(a) requiring a board to adopt a code of conduct under subsection (1);

"(b) governing matters to be addressed by codes of conduct under this section."

What this rewrite of section 218.2 accomplishes—this actually goes back to, again, some of the requests from the governance review committee—is to make it clear, by setting out the board having a local code of conduct, first, that the board is authorized to have its own code of conduct, as many boards already do; when we get to the language around enforcing the code of conduct, that the enforcement language will apply to the board's local code of conduct—again, that was requested by the governance review committee; finally, that the minister may make regulations around things that should be included in that local code of conduct but that the ministerial regulations are not required; and that the board, and many boards do, have a code of conduct of its own and that that can sit on its own.

The Chair (Mr. Shafiq Qaadri): Further comments? Those in favour of government motion 38? Those opposed? Government motion 38 is carried.

NDP motion 39, Mr. Marchese.

Mr. Rosario Marchese: I move that section 218.3 of the Education Act, as set out in section 26 of the bill, be struck out and the following substituted:

"218.3(1) The Office of the Education Integrity Commissioner is hereby established and it shall be headed by the Education Integrity Commissioner.

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"(2) The Lieutenant Governor in Council shall appoint a person to be the Education Integrity Commissioner.

"(3) The Education Integrity Commissioner shall investigate any alleged breaches of a board's code of conduct."

A large number of presenters called for an independent third party to investigate breaches in boards' codes of conduct. We ourselves have called—I did many years ago—in the past for Ombudsman oversight. Investigations into breaches must not only be fair and transparent; they must appear to be so.

We know that there are a lot of parents who often face many, many problems in the school system. They go through the various levels. They go to the principal—sometimes to the teacher and then they go to the principal. Sometimes they go to the trustee. Sometimes they get a good hearing from them, and many times they don't. They are at their wits' end in terms of what to do when they face barriers in the system in terms of speaking to anyone that might hear what they have to say. They have nowhere to go. The system simply encourages you to go through the various channels, and when that fails, where do you go?

This is a motion that, in my view, is critical to be able to help parents out when they have a problem, whatever problem they've been facing. Sometimes these problems plague them for years. We actually need this type of office.

Rob Davis spoke about this, and many others. He said, "The province should create an office of integrity commissioner so that breaches of conduct can be heard in a quasi-judicial framework, allowing for the rules of evidence etc., and so that the rules of natural justice can apply, but also so that members of the public can pursue a remedy, should they wish, when there's an issue of integrity."

In my view it's vitally, vitally needed.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments? Ms. Sandals.

Mrs. Liz Sandals: Yes. First off, I would like to point out that, again, I know that the description that has just been given to us of the role of the education integrity commissioner would be someone that parents could appeal to on all sorts of issues. But in fact what the actual motion says is, "The Education Integrity Commissioner shall investigate any alleged breaches of a board's code of conduct." In fact, it's not even given power to rule on the board's code of conduct. It's simply an investigation of a breach of a code of conduct by a board member.

So, again, what I'm reading is quite different from what I'm hearing.

Mr. Rosario Marchese: Yes, quite right.

Mrs. Liz Sandals: Ironically, perhaps, given everything we've heard about the government and its relationship with school boards, it seems to be the government here that actually trusts the school boards to go about their own business and to deal with their own breaches of their own code of conduct. We think that we don't need an education integrity commissioner to deal with school board breaches of code of conduct. We think that boards are quite qualified to deal with those on their own.

The Chair (Mr. Shafiq Qaadri): Thank you. Those in favour of NDP motion 39? Those opposed? NDP motion 39 is defeated.

Government motion 40, Ms. Sandals.

Mrs. Liz Sandals: I move that paragraph 2 of subsection 218.3(3) of the Education Act, as set out in section 26 of the bill, be struck out.

This was the section of the bill that dealt with penalties for breaching the code of conduct. This particular penalty had to do with reducing the honorarium. There were a number of people who appeared before the committee who said that that was an inappropriate power for a board, that it was out of proportion to the powers that other governmental bodies had to police their own. We have listened to that. We agree with what the presenter said, so we're suggesting that boards in fact should not have the power to impose a reduction of honorarium on colleagues.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. Witmer.

Mrs. Elizabeth Witmer: We have a similar motion in the PC Party, so we will be supporting this.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll proceed to the vote, then. Those in favour of government motion 40? Those opposed? Motion 40 is carried.

I take it that PC motion 41 is out of order.

I would now invite Ms. Witmer to present PC motion 42.

Mrs. Elizabeth Witmer: And we would withdraw motion 42.

The Chair (Mr. Shafiq Qaadri): Thank you. PC motion 42 is withdrawn.

PC motion 43.

Mrs. Elizabeth Witmer: I move that section 218.3 of the Education Act, as set out in section 26 of the bill, be amended by adding the following subsection:

"Same

"(3.1) If a resolution of the board imposes a sanction under subsection (3) barring a member from attending all or part of a meeting, the resolution shall be entered in the minutes of the board and shall be deemed, for the purpose of clause 228(1)(b), to authorize the member to absent himself or herself from the meeting."

So this is raised here, and it was an amendment proposed by the Ontario Catholic School Trustees' Association, who were concerned with the possibility that a board could use the clause to actually remove one of its members from the office of trustee. So they put forward this amendment, and we have it here.

The Chair (Mr. Shafiq Qaadri): Ms. Sandals?

Mrs. Liz Sandals: We agree with the intent of the motion that has been put forward here and have actually dealt with it in our government motion 46. In order to make our motion 46 hang together, we will not be voting for this, but the content of this amendment will get covered in number 46.

The Chair (Mr. Shafiq Qaadri): Those in favour of PC motion 43? Those opposed? PC motion 43 is defeated.

PC motion 44: Ms. Witmer.

Mrs. Elizabeth Witmer: I move that section 218.3 of the Education Act, as set out in section 26 of the bill, be amended by adding the following subsection:

'Same

"(3.2) The board shall engage the services of a neutral third party to assist the board in making inquiries under subsection (2) and in the hearing of any possible appeal of a determination made or sanction imposed under subsection (3)."

Again, this is an amendment that was recommended to us during the hearings by the Ontario Catholic School Trustees' Association, and according to them: "In the absence of a formal appeal procedure at the local board level, a member found by a board to have contravened the code of conduct would be forced to seek redress from an improper finding" or inappropriate sanction through a judicial review. Therefore, fairness suggests that a more accessible process be made available.

The amendment here in front of us establishes the provision for the appointment of a neutral third party, and this would of course, then, substantially strengthen the transparency which is believed to be necessary, and also the objectivity.

The Chair (Mr. Shafiq Qaadri): Ms. Sandals?

Mrs. Liz Sandals: Yes. We, again, were listening when OCSTA mentioned, "How are you going to have an appeal mechanism?" We have suggested in our motion 46 a different appeal mechanism from this one. So it will not be exactly the same as this one, but we have included an appeal mechanism.

The Chair (Mr. Shafiq Qaadri): Any further comments? Those in favour of PC motion 44? Those opposed? PC motion 44 is defeated.

PC motion 45.

Mrs. Elizabeth Witmer: I move that section 218.3 of the Education Act, as set out in section 26 of the bill, be amended by adding the following subsection:

"Same

"(4.1) Despite subsection (4) and section 207, a meeting of the board shall be closed to the public if,

"(a) a sanction is or may be imposed at the meeting; and

"(b) the subject matter under consideration involves the disclosure of intimate, personal or financial information in respect of the member."

This particular motion is intended to protect the privacy rights that are afforded to board members.

The Chair (Mr. Shafiq Qaadri): Further comments? Ms. Sandals.

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Mrs. Liz Sandals: Yes, I think in this case we've arrived at, perhaps, a different conclusion because what we will be doing in motion 46 is clarifying how you would apply the normal in-camera rules that exist in the Municipal Act and the Education Act, to apply it to proceedings around trustee code of conduct breaches or allegations. So, we will be dealing with the subject matter but in a different way.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Those in favour of PC motion 45? Those opposed? PC motion 45 is defeated.

Government motion 46.

Mrs. Liz Sandals: This is the promised motion that deals with absolutely everything.

I move that subsection 218.3(4) of the Education Act, as set out in section 26 of the bill, be struck out and the following substituted:

"Same

"(4) For greater certainty, the imposition of a sanction under paragraph 3 of subsection (3) barring a member from attending all or part of a meeting of the board shall be deemed, for the purpose of clause 228(1)(b), to be authorization for the member to be absent from the meeting.

"Same

"(5) A member of a board who is barred from attending all or part of a meeting of the board or a meeting of a committee of the board under subsection (3) is not entitled to receive any materials that relate to that meeting

or that part of the meeting and that are not available to members of the public.

"Same

"(6) If a board determines that a member has breached the board's code of conduct under subsection (2),

"(a) the board shall give the member written notice of the determination and of any sanction imposed by the

ooard;

"(b) the notice shall inform the member that he or she may make written submissions to the board in respect of the determination or sanction by a date specified in the notice that is at least 14 days after the notice is received by the member; and

"(c) the board shall consider any submissions made by the member in accordance with clause (b) and shall confirm or revoke the determination within 14 days after

the submissions are received.

"Same

"(7) If the board revokes a determination under clause (6)(c), any sanction imposed by the board is revoked.

"Same

"(8) If the board confirms a determination under clause (6)(c), the board shall, within the time referred to in that clause, confirm, vary or revoke the sanction.

"Same

"(9) If a sanction is varied or revoked under subsection (7) or (8), the variation or revocation shall be deemed to be effective as of the date the original determination was made under subsection (2).

"Same

"(10) Despite subsection 207(1) but subject to subsection (11), the part of a meeting of the board during which a breach or alleged breach of the board's code of conduct is considered may be closed to the public when the breach or alleged breach involves any of the matters described in clauses 207(2)(a) to (e).

"Same

"(11) A board shall do the following things by resolution at a meeting of the board, and the vote on the resolution shall be open to the public:

"1. Make a determination under subsection (2) that a

member has breached the board's code of conduct.

"2. Impose a sanction under subsection (3).

"3. Confirm or revoke a determination under clause

"4. Confirm, vary or revoke a sanction under subsection (8).

"Same

"(12) A member who is alleged to have breached the board's code of conduct shall not vote on a resolution to do any of the things described in paragraphs 1 to 4 of subsection (11).

"Same

"(13) The passage of a resolution to do any of the things described in paragraphs 1 to 4 of subsection (11) shall be recorded in the minutes of the meeting.

"Same

"(14) The Statutory Powers Procedure Act does not apply to anything done under this section."

Working through there, we have covered the issue that a sanction of non-attendance cannot be used to count to the ticking time clock that can lead to a trustee being removed from the board, and that if a sanction includes being barred from an in-camera meeting of the board. then you would not be eligible to receive the materials that are related to the in-camera portion of that meeting. In many cases where there is a dispute in the board about allegations of misconduct, it often involves a breach of confidentiality, and that's actually the subject that is the contentious piece of the discussion. Then we go on to have some detailed rules around how to handle an appeal-

Mr. Rosario Marchese: Dispense.

Mrs. Liz Sandals: Well, that's what the rest of it does, anyway.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 46? There are none, so we'll proceed to the vote. Those in favour of government motion 46? Those opposed? Motion 46 is carried.

Government motion 47.

Mrs. Liz Sandals: I move that clause 218.4(f) of the Education Act, as set out in section 26 of the bill, be amended by striking out "views and".

There were a number of presenters who noted that that Chair should be responsible for reporting the resolutions of the board but could hardly be responsible for reporting individual views to the director.

The Chair (Mr. Shafiq Oaadri): Ms. Witmer?

Mrs. Elizabeth Witmer: We have a similar motion, the PC Party, and we will be supporting this.

The Chair (Mr. Shafiq Qaadri): Thank you. Those

in favour of government motion 47? Those opposed? Motion 47 is carried.

PC motion 48, as Mrs. Witmer has just stated, is essentially withdrawn or dealt with.

We'll now move to government motion 49.

Mrs. Liz Sandals: I move that clause 218.4(g) of the Education Act, as set out in section 26 of the bill, be amended by striking out "plans" and substituting "plan".

The Chair (Mr. Shafiq Qaadri): Comments? Those in favour of motion 49? Those opposed? Motion 49 is carried.

PC motion 50.

Mrs. Elizabeth Witmer: I move that section 218.4 of the Education Act, as set out in section 26 of the bill, be amended by striking out "and" at the end of clause (g) and by adding the following clause:

"(g.l) provide leadership to the board in maintaining the board's focus on the board's mission and vision; and"

Again, one of the primary responsibilities of the Chair is to lead the board in maintaining their focus on the mission statements and values, and that's why it's here.

The Chair (Mr. Shafiq Qaadri): Mrs. Sandals?

Mrs. Liz Sandals: We think this is a very constructive amendment, so we will be supporting it.

The Chair (Mr. Shafiq Qaadri): Thank you. Those in favour of PC motion 50? Those opposed? Carried? Shall section 26, as amended, carry? Carried.

Shall sections 27 and 28 carry? Carried.

Section 29, government motion 51: Ms. Sandals.

Mrs. Liz Sandals: We now get into some money motions, I think—yes. I move that section 242.1 of the Education Act, as set out in section 29 of the bill, be amended by adding the following subsection:

"Transition

"(2) Subsection (1) does not prevent regulations made under subsection 241(6) or clause 247(3)(b) after the day the Student Achievement and School Board Governance Act, 2009 receives royal assent from applying to investments held by sinking funds or retirement funds immediately before that day.'

If somebody wants me to try, I will.

The Chair (Mr. Shafiq Qaadri): Further comments? Those in favour of government motion 51? Those opposed? Carried.

Shall section 29, as amended, carry? Carried.

Shall section 30 carry? Carried.

Government motion 52.

Mrs. Liz Sandals: I move that section 31 of the bill be amended by adding the following subsection:

"(10) Section 247 of the act is amended by adding the following subsection:

"Transition

"(11) Despite subsection (3) and subsection 242.1(1), subsections (1) and (2) do not authorize the issuance of debentures for the purpose of repaying, refunding or refinancing any debentures that were issued before the day the Student Achievement and School Board Governance Act, 2009 received royal assent."

The Chair (Mr. Shafiq Qaadri): Further comments? Those in favour of government motion 52? Those opposed? Motion 52 is carried.

Shall section 31, as amended, carry? Carried.

We'll do a block vote now. Shall sections 32 to 40 inclusive carry? Carried.

Section 41, PC motion 53.

Mrs. Elizabeth Witmer: This one, on section 41 of the bill. I would withdraw it.

The Chair (Mr. Shafiq Qaadri): PC motion 53 is withdrawn.

Shall section 41 carry? Carried.

Block consideration: Shall sections 42 to 47 carry?

Section 48: Government motion 54.

Mrs. Liz Sandals: I move that subsection 283.1(1) of the Education Act, as set out in section 48 of the bill, be amended by,

(a) striking out "plans" in clause (a) and substituting

"multi-year plan";

- (b) striking out "ensure plans developed under clause 169.1(1)(e) establish the board's priorities and identify specific measures" in clause (b) and substituting "ensure that the multi-year plan developed under clause 169.1(1)(e) establishes the board's priorities and identifies specific measures";
- (c) striking out "plans" in clause (c) and substituting "multi-year plan"; and

(d) striking out "plans" in clause (d) and substituting "multi-year plan".

The Chair (Mr. Shafiq Qaadri): Government motion 54: Any further comments?

Those in favour of government motion 54? Those opposed? Motion 54 is carried.

Government motion 55.

Mrs. Liz Sandals: I move that clause 283.1(1)(g) of the Education Act, as set out in section 48 of the bill, be amended by striking out "advise the minister" and substituting "advise the deputy minister of the ministry."

The rationale here is that the person who's doing the advising is the director of education. Traditionally, the director of education would talk to the deputy minister, whereas the Chairs would talk to the minister. So this is just sorting out the correct relationship.

The Chair (Mr. Shafiq Qaadri): Those in favour of government motion 55? Those opposed? Motion 55 is carried.

PC motion 55.1.

Mrs. Elizabeth Witmer: We would withdraw that.

The Chair (Mr. Shafiq Qaadri): Thank you. Government motion 56.

Mrs. Liz Sandals: I move that section 283.1 of the Education Act, as set out in section 48 of the bill, be amended by adding the following subsections:

"References to secretary

"(3) A reference in this act or any other act, or in the regulations made under this or any other act, to the

secretary of a board is deemed to be a reference to the director of education of the board.

"Same

"(4) Subsection (3) does not apply to the references to secretary in clause (1)(e) and subsection (2), or to the reference to secretary in the definition of 'employee' in section 57 of the Ottawa-Carleton French-Language School Board Transferred Employees Act."

Those who have been reading the Education Act for years will understand that the archaic wording is the "secretary of the board," or at least the traditional legal wording. That is, in today's lingo, really the director of education. So this just makes it clear that all references to the "secretary of the board" are really, in today's lingo, talking about the director.

The Chair (Mr. Shafiq Qaadri): Those in favour of government motion 56? Those opposed? Carried.

Shall section 48, as amended, carry? Carried.

Block consideration: Shall sections 49 to 55 carry? Carried.

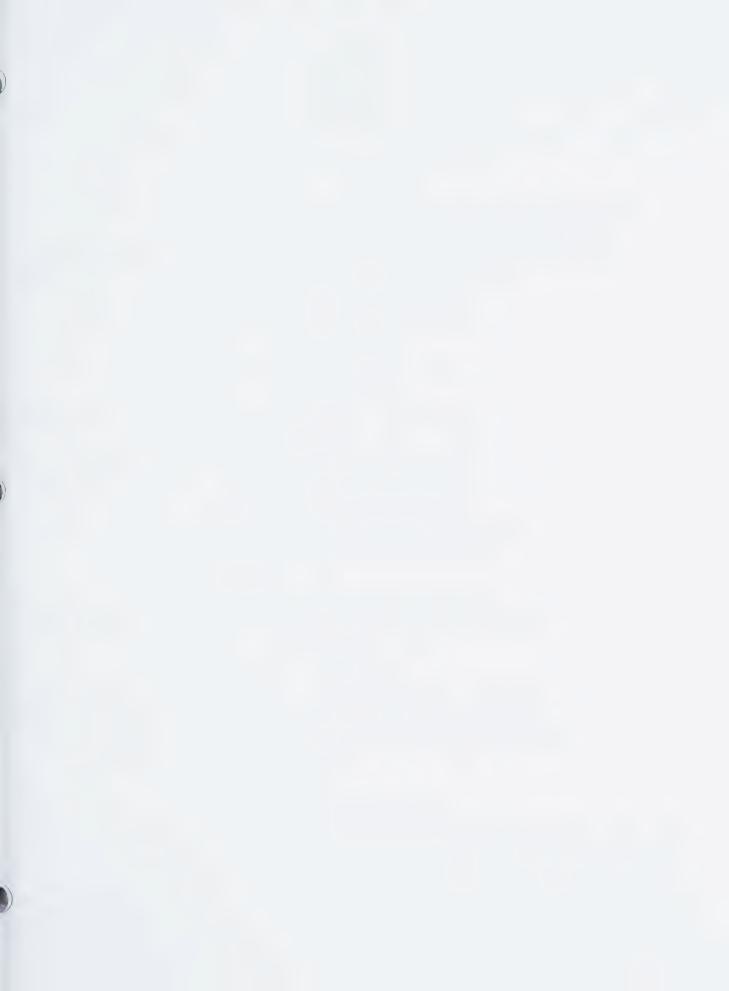
Shall the title carry? Carried.

Shall Bill 177, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

If there's no further business before this committee, clause-by-clause concludes. Thank you.

The committee adjourned at 1610.



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SP-40

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First Session, 39th Parliament

Official Report of Debates (Hansard)

Tuesday 17 November 2009

Standing Committee on Social Policy

Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace), 2009

Assemblée législative de l'Ontario

Première session, 39^e législature

Journal des débats (Hansard)

Mardi 17 novembre 2009

Comité permanent de la politique sociale

Loi de 2009 modifiant la Loi sur la santé et la sécurité au travail (violence et harcèlement au travail)

Chair: Shafiq Qaadri Clerk: Katch Koch Président : Shafiq Qaadri Greffier : Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Tuesday 17 November 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Mardi 17 novembre 2009

The committee met at 1613 in committee room 1.

OCCUPATIONAL HEALTH
AND SAFETY AMENDMENT ACT
(VIOLENCE AND HARASSMENT
IN THE WORKPLACE), 2009
LOI DE 2009 MODIFIANT LA LOI
SUR LA SANTÉ ET LA SÉCURITÉ
AU TRAVAIL (VIOLENCE ET
HARCÈLEMENT AU TRAVAIL)

Consideration of Bill 168, An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace and other matters / Projet de loi 168, Loi modifiant la Loi sur la santé et la sécurité au travail en ce qui concerne la violence et le harcèlement au travail et d'autres questions.

BARBARA DUPONT

The Acting Chair (Mrs. Linda Jeffrey): Good afternoon. This is the Standing Committee on Social Policy. We're here to discuss Bill 168, An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace and other matters. Our first delegation is Barbara Dupont. Could she come forward, please?

Ms. Dupont, when you are ready to begin, you'll have 15 minutes. Should you leave time, there will be an opportunity for members to ask questions. Whenever you're ready to begin, if you could state your name for the record.

Ms. Barbara Dupont: My name is Barbara Dupont. I am here today to share with you a very personal, tragic story about an experience I shared with my daughter Lori. This is her story.

Lori died November 12, 2005, nine days before her 37th birthday, a victim of workplace harassment and violence—harassment which was allowed to continue over an eight-month period and escalate into the most severe form of physical violence.

She was viciously attacked in the OR unit of Hotel-Dieu Grace Hospital, Windsor, Ontario, where she was employed as a recovery room nurse, stabbed seven times by a man with whom she'd had a past relationship—a fellow employee, a doctor.

Lori died almost immediately, despite heroic efforts to save her life. Her assailant, the anesthesiologist, then committed suicide by injecting himself with drugs routinely used in the OR. We never did find the source of the drugs because the hospital made no attempt to investigate.

Following her death, one of my immediate thoughts was, how did this happen? Something went terribly wrong in the workplace. I knew the hospital was well aware of the harassment issues, as formal and verbal complaints had been brought forward to administration not only by Lori but by other employees.

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We began receiving phone calls, some anonymous, stating that a big cover-up was taking place at the hospital: Files were being removed and papers shredded.

After speaking with Lori's friends and co-workers, our family sat down and compiled a two-page list of questions we wanted answered. We needed them answered. But the hospital had already taken a defensive stance and attributed the entire tragedy to domestic violence. They then proceeded to hold their own internal inquiry and conveniently absolved themselves of all responsibility.

A criminal negligence investigation by Windsor Police Services came to an abrupt halt due to the hospital's failure to co-operate. The Ministry of Labour refused to investigate, as Lori's death did not meet their criteria for a workplace death and therefore did not fall under their mandate.

We were faced with the terrible, stark reality that our two-page list of questions might never be answered. Fortunately an inquest was held two years later, but only after the coroner's office received over 10,000 signatures resulting from a petition drive spearheaded by Michelle Schryer of the Chatham-Kent Sexual Assault Crisis Centre.

It was a lengthy and very costly inquest. Many startling and unbelievable facts were revealed. Complacency and arrogance on the part of the employer was clearly evident. No one in a position of authority had been willing to deal with the situation. Many of these seemingly intelligent, highly skilled professionals appeared to lack the knowledge to deal with the situation. Many a blind eye was turned.

They had a zero-tolerance harassment policy, but policies and procedures were not followed; bylaws and codes of conduct not enforced. This doctor was never confronted and held accountable for his harassing and disruptive behaviour.

An expert witness at the inquest testified to over 50 missed opportunities to intercede and break the terrible chain of events which led to the tragedy. The majority of these missed opportunities occurred at the hospital. In his summation, the coroner's counsel stated, "The fact is that most of the harassment occurred at the hospital."

Lori, in the end, had been abandoned by her employers and left to her own devices to survive the best she could in the hostile environment, surrounded by her fellow nurses, who attempted to protect her to the best of their ability. Despite all of these facts coming out of the inquest, there was still no accountability on the hospital's part and no guarantee that the inquest recommendations would be implemented.

The inquest action group, of which I am a member, was formed to monitor and address compliance with the recommendations. We have been working hard for over four years. I was going to present their statement here today regarding Bill 168, but I'm hoping they will have the opportunity to present themselves next week.

In order to achieve some accountability on the part of the hospital, the only avenue left to us to confront the terrible injustice and prevent its recurrence, our family initiated a civil suit against the hospital.

The aftermath in the workplace is still being felt today. Many employees sought counselling. Many were unable to return to work for months. Others requested transfers to different units. Some sought employment elsewhere; they just were unable to return to the unit.

You see that there were many mistakes made, many missed opportunities. Lori and I also made mistakes. Our biggest mistake was in trusting the employer. We trusted they would do the right thing and provide a healthy and safe environment for their employees. This misplaced trust, for us, proved to be a deadly mistake.

Before closing, I would just like to add one more thing. My future hope would be that no one will ever have to endure what Lori and her co-workers did in the workplace, and that no other family will ever have to struggle, as we have over the past four years and as Theresa Vince's family has for over 10 years, in a quest for answers, justice and change.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. We have two minutes for each party to ask questions, beginning with Mr. O'Toole.

Mr. John O'Toole: First and foremost, Ms. Dupont, I want to thank you very much for your courage, for coming forth and for bringing the real circumstances, which are so important for us to understand the injustice or the trust you presumed was there.

I'm just wondering: If you were to say to the members of the government primarily—as you would probably know, you were helpful when I introduced the bill in honour of your daughter's name, the Lori Dupont Act, and it's my feeling that they simply blocked that act, which would have at least allowed for a restraining order to be issued by a justice of the peace, seven days a week,

24 hours a day. That is not in this bill. There is no specific direction or action required for access to a restraining order. Would you encourage the government members to listen to your story of your daughter, of Theresa and of others who have been victimized—I could list three or four cases that I'm familiar with, also in the workplace, where it was perpetrated.

Ms. Barbara Dupont: As you know, my daughter had applied for a peace bond in April and it was not due to be held in court until December, the month after she died. The man against whom it was brought forward offered up various excuses as to why he was not ready to appear in court. It had been rescheduled three times, and the hospital was well aware of the peace bond issue.

Mr. John O'Toole: Again, I think your story and your words are more input than my questions or comments. I commend you again for your courage, and would encourage the government members to listen and act to protect mostly women—almost entirely women—from violence in the workplace. There must be responsibilities on the courts as well, which is the legitimate arm of the government to intervene in all settings. This is the most important part of the statement that I hear from you. Thank you again for coming before the committee today.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. O'Toole. Ms. DiNovo?

Ms. Cheri DiNovo: Thank you, Madam Chair. First and foremost, I want to give you my prayers and condolences and those of our leader, Andrea Horwath. Thank you for your testimony. Thank you for your courage and your social justice action coming out of this tragedy.

As you know, Andrea submitted a bill, Bill 29, that was much stronger than this one, based on Lori's death and murder. We in the New Democratic Party are going to try to make this bill a whole lot stronger, certainly so that there are not those missed opportunities. I think those missed opportunities of psychological harassment that lead up to violence are where we have to begin to address violence before it ever happens.

Again, you are certainly a beacon of social justice action for women right across this country. Thank you for what you and your family have done. I wish you didn't have to have done it; I wish that the government had acted sooner; I wish the hospital had acted sooner. But now, because of your actions, something is going to change. Again, it's because of women like you that change does occur. Thank you again.

The Acting Chair (Mrs. Linda Jeffrey): Ms. Mitchell?

Mrs. Carol Mitchell: Thank you, Chair. Ms. Dupont, I can't imagine the courage it must take for you to do this, and I want to thank you on behalf of all the women whose lives you're helping. As the mother of two girls, I can appreciate how difficult a journey it has been for you, and I do sincerely want to thank you.

My question to you is, do you feel that Bill 168 does raise awareness for harassment in the workplace?

Ms. Barbara Dupont: I feel it continues to focus more on physical injury and does not focus enough on the psychological and emotional areas of harassment that lead up to and can lead into physical violence. In Lori's case, there were many signs and signals, and they gradually escalated over an eight-month period. Harassment needs to be caught when it first starts, so that it doesn't continue to escalate, and I don't think the bill reflects enough the continuum of violence where it starts and gradually seems to escalate.

Mrs. Carol Mitchell: Thank you for your presentation today. We from the government side sincerely appreciate all your words.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much for being here today.

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CANADIAN FEDERATION OF INDEPENDENT BUSINESS

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the Canadian Federation of Independent Business. Welcome. As you get yourselves settled, if you're both going to be speaking, could you state your names for Hansard and the organization you're speaking for? When you begin, you'll have 15 minutes.

Mr. Satinder Chera: My name is Satinder Chera. I'm director of provincial affairs for the Canadian Federation of Independent Business. I'm joined today by my colleague Angela Cloutier, who is the federation's policy analyst here in Ontario.

We appreciate this opportunity to appear before the committee in respect of Bill 168, a very monumental and certainly a serious matter that this committee is grappling with, with this legislation. We will be speaking entirely from the slide deck that is in your kit. On the right side of your kit there are additional materials as well that we will be referring to throughout the presentation.

Starting with slide 2, as members will know, we represent about 42,000 small and medium-sized businesses in the province of Ontario. This slide gives you an indication of the diversity of the membership we hold. We have virtually every type of business you can think of; mostly these are small businesses, though.

On page 3, this is a slide we often show with pride: the fact that most Canadians count on the small and medium-sized business sector to create most of the new jobs in the province and in the country. I think it sort of speaks as well to a sector that dominates the Ontario business landscape. On page 4 you will see that 81% of Ontario's businesses employ fewer than five employees and 60% have no employees at all.

On slide 5, we have our business barometer. The results of the recent barometer were taken in October and released about two weeks ago. What they indicate is that we've seen a gradual increase in expectations among the small business sector, but in the most recent results there was a small dip, primarily owing to the manufacturing

sector, which has been hurt by the high dollar over the past couple of months.

On slide 6, we speak to our members' top priorities in terms of the challenges they face. One area that is a concern is the government regulation on paper burden. We certainly appreciate the government's efforts in this area with the Open for Business initiative, which we think is a step in the right direction.

On page 7, I think it's safe to say that every government regulation has at least one laudable public goal; in other words, it's a good thing. But it can be a bad thing if it fails the following test in terms of effectiveness and a cost-benefit analysis. Also, the sum of all regulations is a bad thing if it exceeds government's capacity to administer it or it also exceeds the capacity of small and medium-sized businesses to cope with the requirements that are being placed upon them.

On slide 8, as you can see, most SMEs derive revenues of less than half a million dollars a year. We want to illustrate in this slide the type of resources that small and medium-sized firms are working with. It has never been said to us that we do not want to do good by the laws that are in our province. The challenge, of course, is: If we don't have the resources or the information, how can we make that happen?

On slide 9, we've also estimated the cost of training. Primarily, smaller firms incur huge costs when they train their employees, but they recognize that their employees are their most prized asset, their most valuable resource. We know, in talking to our members, that they work primarily side by side with their employees day in and day out, and so training is definitely one area we want to commend to your attention.

With that, I'm going to pass it over to my colleague, Angela, to take you through the rest of our presentation.

Ms. Angela Cloutier: Thank you, ladies and gentlemen. The reality of a small business environment is that the owner is the human resource person on top of everything else they have responsibility for, such as running the business, looking after the customers, payroll, inventory and taxes. Owners are not trained risk assessors. They are not medical diagnosticians. They are not trained mediators. Owners bear the risk of running afoul on human rights, employment standards, civil law requirements if they mishandle sensitive situations. The reality is that small businesses have limited resources and expertise in complying with regulations, and if they make a mistake, government comes down quite hard on them.

Slide number 11 shows that we cannot blame small business owners for being confused with the mishmash of different government associations and their mandates that try to help them out in these situations. We understand that the health and safety association under the WSIB has undergone realignment recently, but the jury is still out as to the meaningful impact they will have on the product delivery to the small business customer.

What is the government's role? The government's role which is most fundamental is to protect citizens from violence, external and internal. The workplace is simply another form of location. Government has a respon-

sibility to its own workplaces and to the broader public sector workplaces, and in privately owned workplaces as well. Slide number 13 shows that government as an employer, directly and in the broad public sector, has not been able to eliminate workplace violence. Under Bill 168, employers must take every reasonable precaution to protect the worker, creating serious and significant obligations on small and medium-sized enterprises. What we have here is the potential of government creating two sets of rules: one for the public sector and another for the private sector.

In conclusion, our recommendations are such: Small and medium-sized businesses will need to add to their training costs and make improvements as are suggested quite often, such as locks, doors or physical barriers; government needs to provide funds to meet these additional responsibilities, such as conducting risk assessments in individual businesses or any necessary training and facility improvements; we'd like to follow the Alberta model, a prevention of workplace violence policy statement, which is included in your package on the right-hand side and has the blue stripe on the top. We'd like to use this as a template for small businesses in Ontario: Limit the employer's responsibility to referral of problem employees and customer-client relations to police or alternative interviewers; and immunize small business owners from human rights, employment standards and civil law exposure in their attempts to identify and deal with problem employees and customer clients.

Mr. Satinder Chera: Thank you very much for that. We'll take any questions that you have.

The Acting Chair (Mrs. Linda Jeffrey): We have just over two minutes for each party, beginning with Ms. DiNovo.

Ms. Cheri DiNovo: Thank you for that presentation. What I'm reading from it is that your recommendation is the sort of thing that Alberta has in place. I'm going to ask you seriously: Do you really think that by signing this, Lori Dupont's death would have been prevented?

Mr. Satinder Chera: Actually, Ms. DiNovo, our intent in including this in your kit was to demonstrate what other provinces are doing in terms of helping and supporting small businesses. You of all people know that small businesses have limited resources; they have limited capabilities; they have hundreds upon hundreds of regulations to deal with. They are more than serious about their obligations to their employees. Let's not forget they work side by side with their employees.

Our intent, in including this document in here, was to demonstrate yet another tool that if the government really wants to work with small business, here is something they can create and that they can help small businesses to navigate through the mishmash that Angela talked about: a health and safety system in the province of Ontario which is a complete disaster. It has been for many, many years. So this was intended as a recommendation.

Certainly our heart goes out to Ms. Dupont and her family. Our intent here is to provide solutions to help the

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small and medium-sized business sector to comply with the regulations that the government is proposing.

Ms. Cheri DiNovo: But Bill 168 purports to do that. We obviously, as I've said, in the New Democratic Party would like to see Bill 168 strengthened, not weakened. As small business critic, I'm absolutely aware of what small business has to go through, and there's no doubt that you're right in some of the regulatory burden, but this is about protecting women's lives, quite frankly, and I can't see anything short of Bill 168—in fact, we think more than Bill 168 is necessary to bring that about. I don't see that that is going to be onerous for small business, any more than it would be for the hospital in which she was killed.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Satinder Chera: Again, if I can just—

The Acting Chair (Mrs. Linda Jeffrey): A short, quick answer.

Mr. Satinder Chera: Yes. Again, as we've stated in our recommendations, what we're talking about is giving businesses the resources and the information so that they can be in compliance with Bill 168. As it currently stands, there are no provisions to support our sector.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much, Mr. Chera and Ms. Cloutier.

I understand that you guys have met with the Ministry of Labour in the past and you've discussed the Alberta model. Would it be a fair assumption to say that you would be supportive of this bill if similar types of easy-to-follow materials were made available?

Mr. Satinder Chera: We've actually had, I would say, good discussions with the ministry, and the minister's office in particular, on this legislation. I think they clearly understand where our concerns are. They know that we want to work with the government in terms of this legislation that's being proposed. It's a serious piece of legislation. It's needed. There's no question about that.

What we're saying is that there are solutions to help our sector. We've brought forward one recommendation, which is something that they've done in Alberta to support small businesses, to give them the resources that they need so that they have a policy in place, that they are able to train their employees about their rights and responsibilities. We're quite confident that the minister's office has heard us loud and clear.

We know that they are talking about potentially allowing the WSIB, for example, to have control over this. Our preference would be for the Ministry of Labour to put this type of policy package together for our members, sort of this type of template that you have before you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Ms. Jones.

Ms. Sylvia Jones: A quick question. With your fourth point under your recommendations, you talk about, "Immunize small business owners from human rights/ESA/civil law exposure...." Would that immuniz-

ation include when the harassment occurs on the premises, within the workplace environment?

Mr. Satinder Chera: No, no. Our point with number 4 is to suggest that there are a lot of obligations on employers, and if they identify that there is harassment going on in the workplace and they work to act very, very quickly, as a result of quickly trying to react to that situation, to make the authorities aware that this is happening, could they inadvertently violate one of the other rights and obligations out there, whether it's under the Employment Standards Act? Our only reason for pointing this out is that that may potentially happen in that an employee who may be potentially identified as being aggressive may turn around and then try to imply that the employer has violated their Employment Standards Act rights and obligations. So our point is, there needs to be sort of a road map for small businesses so that you don't put them in a situation where, yes, they've complied with this piece of legislation, but they may have inadvertently violated another piece of legislation.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much for being here today. We appreciate your time.

Mr. Satinder Chera: Thank you.

ONTARIO COALITION OF RAPE CRISIS CENTRES

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the Ontario Coalition of Rape Crisis Centres. Welcome. As you get yourself settled, if you could state your name for Hansard and the organization you speak for. Once you begin, you'll have 15 minutes.

Ms. Michelle Schryer: Thank you and good afternoon. I'm Michelle Schryer from the Ontario Coalition of Rape Crisis Centres. I thank you for the opportunity to appear before the committee regarding this issue of utmost importance and consequence.

The Ontario Coalition of Rape Crisis Centres has been in existence since 1977 and currently represents a membership of 24 sexual assault centres throughout the province.

The coalition works for the prevention and eradication of sexual violence, including gendered workplace harassment and violence; promotes legal, social and attitudinal change in this regard; and encourages, generates and supports research and, in fact, provided sponsorship for the research project by the Centre for Research and Education on Violence Against Women and Children.

In 2004, that organization produced the report entitled Workplace Harassment and Violence. The report offered many dozens of recommendations to address workplace harassment and violence, including two recommendations to the Ministry of Labour. Specifically, the report recommended amendments to the Occupational Health and Safety Act requiring employers to protect workers from workplace-related sexual harassment, give workers the right to refuse to work in certain circumstances after

sexual harassment has occurred and take steps to prevent further occurrences of workplace-related sexual harassment. The other recommendation to the Ministry of Labour was that it "provide appropriate training for health and safety committees to assist them in acquiring the expertise needed to address prevention, policies and investigations."

It follows, then, that the coalition very much supports the passage of Bill 168, but we have some concerns about the proposed legislation and believe that amendments are in order.

Through our member centre in Chatham-Kent, the coalition was present throughout the entirety of the inquests into the murders of both Theresa Vince and Lori Dupont. Through these proceedings, it was made evident that legislative change to better address workplace harassment and domestic violence under the Occupational Health and Safety Act is absolutely essential.

The Theresa Vince inquest proved beyond doubt that workplace harassment is an occupational danger that can and has resulted in death. The Lori Dupont inquest proved that domestic abuse can and does spill into the workplace, that it can and has resulted in death. It should be noted that in nurse Lori Dupont's situation, she also experienced harassment on the job by her abuser, as did other nurses and a nurse manager.

Perhaps you are aware that Theresa Vince was not the first Ontario woman to be murdered by her harasser after experiencing workplace harassment. She was at least the fourth, and as we are painfully aware, she was not the last. She and Lori were two in a line of women whose lives were ended at the hands of men who had harassed them at work. And so it becomes the responsibility of this Legislature to pass workplace health and safety laws that are as good and as effective as they can possibly be.

Bill 168 introduces enhanced protections against workplace violence and new measures to address workplace harassment as well as violence and harassment that occur as a result of domestic violence. While this legislation is an important step forward, in its current form, the bill separates definitions of "workplace violence" and "workplace harassment" and sets out separate provisions to address workplace violence, harassment and domestic violence. The result is that the legislation continues to emphasize the risk of physical violence rather than focusing on the continuum of behaviours that result in risk to safety, well-being and health. That is of concern to us, and we firmly believe that amendments are required before this bill is passed into law.

It is our view that Bill 168 does not adequately recognize the continuum of violence that can occur and that can most certainly result in physical harm and injury, compromised emotional health and well-being, physical stress-related illness and other stress-related symptoms caused by workplace harassment or the presence of domestic violence that spills into the workplace. We believe that the definition of "workplace violence" needs to be broadened to effectively address not only physical violence, but the continuum of violence. It is important

that the language in health and safety legislation recognizes that some acts of violence are easily interpreted as violent, while others are less clear and not necessarily overt. Nonetheless, these acts can lead to more physically destructive, violent behaviours and can have significant consequences for workers.

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We want as much emphasis on workplace harassment and domestic violence as there is on physical violence. For someone like Theresa Vince, who experienced an escalation of harassing behaviour, it is doubtful that the proposed legislation in its present form would have been an effective tool. As I have previously alluded, the inquest into her death proved that her murder was the final and very direct result of workplace harassment. Accordingly, it is crucial that occupational health and safety legislation recognizes the complexity of harassing behaviour and how it escalates. For Theresa Vince, what began as unwelcome compliments escalated until it ended in her murder. It was revealed that an adequate investigation would have in fact resulted in the possibility of laying criminal harassment charges. Ontario needs an Occupational Health and Safety Act that better protects workers from violence, whether or not that violence is physical in nature.

Similarly, in the case of nurse Lori Dupont, evidence revealed an escalation of behaviour, as her mother shared with you, and tactics by her killer indeed did escalate until finally Lori was killed. There were dozens of opportunities to intervene on her behalf, and they were missed. I will say again: The proposed legislation has a focus on physical violence and in our view does not adequately recognize that continuum of violence. We want as much emphasis on domestic violence when it spills into the workplace and on workplace harassment as there is on physical violence.

We support Bill 168 in principle because we know that the current system lacks the ability to effectively keep workers safe and healthy when they experience workplace harassment or when domestic violence spills into the workplace. It fails to effectively protect that fundamental right that workers have to safe work conditions and to be able to go home at the end of the day healthy and whole.

The family of Theresa Vince can attest to this. At the inquest into her workplace murder, evidence was given about the Occupational Health and Safety Act as a vehicle for addressing workplace harassment. It wasn't a coincidence that the jury recommendation to the Ministry of Labour was regarding change to the Occupational Health and Safety Act.

The family of Lori Dupont can attest to this. It wasn't a coincidence that the inquest jury into Lori's death directed a recommendation to the Ministry of Labour regarding change to the Occupational Health and Safety Act.

We believe that with amendments, Bill 168 can make a positive difference, that the legislative reform of Bill 168 has the potential to strengthen, in a very real and meaningful way, the protection of workers' health and safety in Ontario. And we believe that the most effective way to prevent workplace violence, including harassment and domestic violence, is to include them in the same definition as physical violence. Experience and the lessons of two public coroner's inquests have shown that all forms of violence are a threat to workers' health, safety and security, and therefore should be addressed under one program.

We believe that the legislative reform of an amended Bill 168 has the potential to save lives, but if the bill passes in its current form, with more emphasis on physical violence than on workplace harassment and domestic violence, then Bill 168 may well be another missed opportunity to protect women from gendered violence when it occurs at work, and another missed opportunity to better protect all Ontario workers who experience harassment and violence on the job.

The province has finally embarked on the important mission of creating legislative change to advance the health and safety of Ontario workers who experience harassment on the job and who experience domestic violence that spills into the workplace. By doing so, the province is promoting equality, safety, dignity and respect of all Ontario workers. We want to recognize Minister Fonseca for being the first Minister of Labour to demonstrate political will to improve the health and safety of Ontario workers since the workplace murder of Theresa Vince nearly 13½ years ago.

It is important to also acknowledge, however, that the bill didn't happen simply because government proactively decided that it would be a good idea. It happened because Theresa Vince and Lori Dupont were killed at work and both their murders were preventable and both their families made a conscious decision that the deaths of their loved ones would not be in vain.

In 1996, the Vince family petitioned for an inquest and shared the most horrific tragedy of their lives to make sure that another family would not lose a wife, a mother, a daughter, a grandmother, a sister or an aunt as a result of workplace violence. Then, just four years ago, Lori Dupont was taken from her family when she was killed at work, and her family, as you heard earlier, petitioned for an inquest and shared the most horrific tragedy of their lives to make sure that another family would not lose their loved one to violence on the job.

Again, it is the responsibility of this Legislature to pass workplace health and safety laws that are as good and as effective as they can possibly be. In the spirit of making new legislation as meaningful and effective as possible, we respectfully suggest that Bill 168 revise its definition of workplace violence to make it inclusive of physical violence, all forms of harassment and domestic violence. A definition that focuses on the continuum of behaviours that result in explicit or implicit challenges to safety, well-being or health would provide a framework that is preventive and systemic and, we believe, would serve to honour the memories of Theresa Vince and Lori Dupont.

Issues of workplace harassment and violence, including bullying and domestic violence—

The Chair (Mr. Shafiq Qaadri): You have about a minute left, Ms. Schryer.

Ms. Michelle Schryer: Thank you—have become topical in all of Canada, and other jurisdictions have incorporated psychological violence into their legislation. I won't read to you all the things it can involve because you can read that for yourself, but certainly it's very, very significant. Psychological violence is currently covered under the definition of Bill 168, but again, we believe it should be included as part of the workplace violence definition. Otherwise, critical warning signs that physical violence or serious illness may occur could be easily overlooked.

On behalf of the Ontario Coalition of Rape Crisis Centres, I want to thank the government of Ontario and the Ministry of Labour for their efforts, commitment and work in drafting Bill 168 to improve the protection of all Ontario workers.

In closing, I want to thank the families of Theresa Vince and Lori Dupont, who have worked long and hard for occupational health and safety reform. I urge you to honour the memories of their loved ones by ensuring that when Bill 168 passes into law, it is the best legislation that it can possibly be—and I would ask you to just read that other little paragraph on your own. Thank you so much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Schryer, on behalf of the committee, for your written deputation and your presence here today on behalf of the Ontario Coalition of Rape Crisis Centres.

I'd also like to thank my colleague Linda Jeffrey for filling in as Chair for a few of the presentations.

ONTARIO HUMAN RIGHTS COMMISSION

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter to come forward: councillor, mayor and chief commissioner the honourable Barbara Hall, a well-known public servant and colleague who serves, as you know, as the Ontario Human Rights Commission's chief commissioner. I will now return to reinforcing with military precision the 15-minute time constraint, and I'd invite you, Commissioner Hall, to please begin.

Ms. Barbara Hall: Thank you, Mr. Chair. I'm Barbara Hall, chief commissioner of the Ontario Human Rights Commission. I'm accompanied by Jeff Poirier, senior policy staff person from the commission.

The Ontario Human Rights Commission is pleased to have this opportunity to come before the Standing Committee on Social Policy and speak in support of Bill 168, the Occupational Health and Safety Amendment Act.

As you know, Bill 168 calls for new requirements for employers to develop, implement and annually review policies and programs to address workplace harassment and violence. This would include incident reporting, complaint and response procedures, measures to protect workers from domestic violence, as well as providing information to workers about the policies and programs.

The commission views these provisions as important because workplace harassment and violence are human rights issues as well as health and safety issues. Often, workers are disproportionately targeted and harassed, or sometimes assaulted or killed, as Barbara Dupont has so eloquently and passionately described in the case of her daughter Lori. These workers are targeted and harassed, assaulted or killed because of their gender, race, ethnic origin, creed, sexual orientation or other prohibited grounds of discrimination under the Ontario Human Rights Code.

The code requires discrimination-free workplaces, including freedom from sexual solicitation made by a person in a position to confer, grant or deny a benefit, as well as protection from other forms of harassment and discrimination targeted at vulnerable individuals and groups that can sometimes lead to violence. Yet workplace harassment in particular has been the subject of many complaints filed with the commission over the years, and applications continue to be filed directly with the Human Rights Tribunal under Ontario's new human rights system.

Workplace harassment and violence is a systemic problem that deserves a systemic solution. The commission believes the type of legislative change proposed by Bill 168 is very much needed to help protect and promote the human rights of all workers. If enacted, this bill would complement Ontario's Human Rights Code and system because it would provide mechanisms directly into workplaces to promote compliance province-wide rather than having to address human rights issues and litigate compliance one case at a time.

This also benefits employers because it provides a structured means and a consistency for them to meet their obligations under human rights law. It also puts employers in a better position if they're challenged by human rights complaints.

At the same time, the commission would like to identify some areas that might be given additional consideration.

The commission is pleased to see that the bill adopts the Human Rights Code definition of "harassment," which includes both vexatious conduct and comment that's known, or ought reasonably to be known, to be unwelcome. The definition of "workplace violence," on the other hand, is specific to "physical force" against a coworker.

While this may be one threshold to trigger a worker's right under the proposed bill to refuse or stop work if an incident or threat of violence is likely to endanger the health and safety of the worker, it should also be understood that violence and harassment are not always physical. They can take the form of psychological or emotional harm. Violence can also be the culmination of escalating acts of harassment and other forms of discrimination. Preventing violence starts with preventing and addressing harassment and discrimination. The bill

or its implementation should account for this continuation of interrelation between discrimination, harassment and violence.

Bill 168 would require employers to assess and report on the risk of workplace violence, as well as put in place measures and procedures to control the risks identified. Consideration might be given to having similar requirements for assessing and addressing the risks of workplace harassment. This can be important, particularly for preventing situations where harassment may become routine and systemic, potentially poisoning an entire workplace, negatively impacting targeted groups.

As a result of Bill 168, occupational health and safety inspectors would have a role to play in situations involving workplace violence. Inspectors or other ministry staff may have a role to monitor and enforce compliance with other provisions of the bill, including development and implementation of policies, procedures and programs. Ideally, procedures would include mechanisms to investigate allegations, mediate and resolve matters.

As well, other provisions of the Occupational Health and Safety Act may be relevant to an employer's new obligations to address harassment and violence, such as training, inspections, orders and penalties, particularly in situations where an employer has failed to take measures that could have prevented violence and harassment. In our experience, making sure these types of steps are taken will go a long way in preventing human rights violations and unnecessary litigation.

Bill 168 also provides for authority to make regulations, including a regulation "requiring an employer to designate a workplace coordinator with respect to workplace violence and workplace harassment." The commission would encourage enacting such a provision as soon as possible, because it has both symbolic and practical value. Workers will see that management takes these issues seriously, and if and when incidents occur, workers will know where to go for help. Ideally, workplace coordinators would deal with other forms of discrimination that relate to harassment and violence.

Lastly, the commission would suggest that successful compliance begins with good public education and information sharing, as well as monitoring impact on those the bill is intended to help. Provision of resources, such as templates and samples for workplace policies and procedures, would also help employers, particularly smaller ones, meet their obligations under the proposed bill.

Bringing harassment and violence under the protection of occupational health and safety legislation would help to further harmonize employment and human rights law. It also helps to promote much-needed public attention and broader social responsibility, and it demonstrates a serious commitment to addressing a serious problem.

The commission continues its own promotion and compliance work under our new public interest mandate, offering our assistance wherever and whenever we can.

Right now, Jeff and I would be pleased to answer any questions that members of the committee have had, and I will leave you copies of my remarks. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Commissioner Hall. We have about 90 seconds per side, beginning with the government.

Mr. Vic Dhillon: Thank you, Ms. Hall, for your presentation and as well thank you for all the good work that the commission is doing in protecting Ontarians from discrimination.

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What's your view about the commission's role in the provisions of Bill 168? Do you see them both working together?

Mr. Jeff Poirier: Sure. As we said in the presentation, what's being proposed in the bill certainly complements what's in the Human Rights Code. The human rights system in Ontario is there when it's needed. It should be seen as the process or the option of last resort.

Really, the commission's job is to prevent complaints from coming into the human rights system, looking for complementary initiatives like what is being proposed under Bill 168, to put in place mechanisms so that employers can engage in their responsibilities under human rights law.

We should be clear: The obligation to have a discrimination- and harassment-free workplace is there under human rights law. But what's being proposed in Bill 168 really helps to put procedures and mechanisms in place to help prevent things from going too far.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Dhillon; I need to intervene there. To Ms. Jones.

Ms. Sylvia Jones: Commissioner Hall, you mentioned that you receive a number of complaints and files now. Could you give me a rough idea of the breakdown of how many would be worker on worker and how many would be outside to worker?

Ms. Barbara Hall: Jeff can.

Mr. Jeff Poirier: We don't have a breakdown of complaints exactly like that, but looking over many years, approximately 10%—actually, I should say 75% of all the complaints that come into the human rights system have to do with employment. There are other areas, like housing and services, but by far, discrimination or harassment is in employment. About 10% of the cases that come in deal with sexual harassment. Harassment takes many other forms—racial harassment, sexual orientation and so on—but for sexual harassment, it's 10% right there. We don't have anything further broken down the way you've asked.

Ms. Sylvia Jones: Okay.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones. Ms. DiNovo.

Ms. Cheri DiNovo: Thank you, Mr. Chair. It's always a pleasure, Commissioner Hall. I was listening with some interest. Can I take out of what you're saying that you support the recommendations that came before, by Ms. Dupont and Ms. Schryer, concerning the extension of the definition of violence in Bill 168 to include psychological violence and harassment?

Ms. Barbara Hall: We certainly believe that the legislation, in its implementation, ultimately needs to take into account the continuum.

Mr. Jeff Poirier: And I would just add, the way the bill is written right now, there are a number of things that are covered, both on the side of harassment and violence, so there's a lot that is similar for both. Departure happens in two areas: one is for workers who want to stop the workplace or refuse to work—that's tied to the narrower definition of violence being physical; and the other area being the employer's responsibility, in advance, to look at what the risk factors are for violence in the workplace.

We're proposing in our submission that employers also should have the same obligation to look at the risk factors around harassment.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. DiNovo, and thanks to you, Mr. Poirier and Commissioner Hall, for your deputation and your written submission, which I understand is forthcoming.

CANADIAN SOCIETY FOR INDUSTRIAL SECURITY

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter to please come forward: Mr. Robertson of the Canadian Society for Industrial Security. Welcome, Mr. Robertson. You've seen the protocol. You have 15 minutes in which to make your presentation. I invite you to begin now.

Mr. Brian Robertson: Thank you, Mr. Chair. My name is Brian Robertson. I'm the regulatory affairs adviser to the national board of directors for the Canadian Society for Industrial Security.

CSIS is a national industry association for private security professionals. We were incorporated federally in 1954. Although we have membership all across Canada, about 60% of our membership currently is from the province of Ontario, where we have active local chapters operating in the greater Toronto area, the National Capital Region, and southwestern Ontario.

By and large, we represent the kind of people who employ security workers in the province of Ontario. There are about 65,000 security workers licensed under the Private Security and Investigative Services Act here in Ontario. These are typically contract security guards, in-house security officers, bouncers in nightclubs and other licensed premises, retail loss prevention officers in department stores, private investigators, bodyguards—that kind of thing.

If you're in one of those occupations, workplace violence is and has for a long time been an important occupational issue for you. In the security industry and at CSIS, we're particularly proud of the role that we have always played and continue to play in helping to protect other workers in the workplace from the threat of violence in the workplace. But we in that role face some challenges.

The primary challenge that we face in terms of this issue is that, whereas our workers are often the people who get inserted between other workers and the violent folk, we as employers recognize that our employees are themselves workers who are entitled to expect us to take

reasonable measures to protect them from the threat of workplace violence in their workplace. The challenge here is that in most cases when you're dealing with a workplace hazard, the primary paradigm for protecting somebody from it, the most basic way to protect somebody from it, is to tell them to avoid it, to get them away from the hazard. The problem for our employees is that if the hazard is workplace violence, their job description says that they're supposed to run toward the hazard. This creates a real problem for us, a real dilemma.

Now, this is not a description of every security worker in the province. There are lots of security employers' situations where the employer's instructions to the workers are to take a hands-off, no-intervention approach: observe and report, call the police, that kind of thing. But it's also true that there are a significant number of employers in this province, if you consider that we're talking about bouncers in bars, security in hospitals, security at special events, security in retail, loss prevention officers, who do require their employees to use force in the execution of their duties.

We spend a lot of time in my industry debating over the exact role of the private security industry versus public police: What should we be doing, what shouldn't we be doing? We spend a lot of time debating and get a lot of media attention around issues of use of force. But there are three observable facts that we're kind of stuck with. One is that criminal law in Canada in fact confers on our workers fairly significant authority to make citizen's arrests, to use force to make arrests, to remove trespassers, to protect other workers from violence. The second thing is that there are a significant number of employers who, as a matter of course, require security workers to do that. And thirdly, as a result, there are a significant number—and I'm talking some tens of thousands of workers in this province—who do in fact on a day-by-day basis use force in order to execute the duties that they carry out.

Some employers in our industry do a really good job of protecting our workers from the threat of workplace violence to them, but some don't. I think it's axiomatic that regulations tend to be designed to change the behaviour of employers or members of the public who aren't inclined to be compliant. Because of that, we at CSIS have looked forward with positive anticipation to workplace violence legislation in the province of Ontario.

By and large, I should say that we respond fairly positively to Bill 168 and we think the province has taken advantage of being late into the field compared to other provinces and has come up with a fairly comprehensive piece of legislation. In contrast to some of the previous speakers today, our view is that a good job has been done of balancing the different kinds of workplace violence. Our view is that whether the violence is at the hands of an intimate acquaintance, at the hands of a co-worker, at the hands of an irate customer or at the hands of a felon who has come in off the street, all workers deserve protection from violence. Not all the violence that workers are subjected to is the culmination of a long pattern of harassment based on intimate relationships.

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We think it's salutary that the province is dealing with domestic violence, discrimination and workplace violence all under the same piece of legislation, without unnecessarily muddling the definitions. Our experience in other jurisdictions where we've looked at this kind of legislation is that often disproportionate attention on policies to prevent discrimination in the workplace results in there being short shrift given to practical measures in place to protect workers from physical violence who aren't subject to that violence as a result of the culmination of a long series of events.

We are generally in favour of the legislation, but we also have concerns about it. The concern we have and the reason that we've come forward today is that although the legislation is very specific in some areas, it is in some cases not specific enough, we think, to get at least the employers in our industry to the line. For that reason, we come forward with two recommendations.

The first relates to the right to refuse unsafe work. You're all aware that under section 43 of the act, workers have the right to refuse unsafe work and that Bill 168 will be extending that right in circumstances where there's an apprehension of a threat of workplace violence.

You're also all aware that there are essentially three exceptions to this set out in the legislation. There is an exception where it can be said that the threat of exposure to workplace violence is a normal condition of employment, that it's inherent in their work. There is provision for exception from the right to refuse in circumstances where a refusal to do the work would endanger the life, safety or health of someone else. And there are four specific categorical exceptions for four broad categories of occupation-essentially police, fire, corrections, and hospital workers. There is also provision, again as you're aware, for the minister to make regulations specifically designating occupational groups as groups for which the threat of workplace violence is inherent. But our view and our recommendation is that licensed security workers, who are a very clearly defined group in Ontario, should be added as a fifth categorical exception.

The reason for that is that we have a significant apprehension that if Bill 168 passes in its present form and security workers are given the right to refuse on the basis of workplace violence, there will be a significant number of security workers who exercise that right. We're going to end up, we think, in situations where the employer says, "Go in and break up that fight," or "Protect that woman from violence," and the worker is going to say, "I'm not going to. I'm going to exercise my right to refuse under section 43." The employer is going to say, "Ah, but it's an inherent condition of your work," and the employee is going to say, "No, it isn't, because if it were, you'd give me a bulletproof vest." At the end of the day, we're going to have legislation being made by Ministry of Labour inspectors coming out and making rulings in the field or by arbitrations.

Our view is that we should maintain the status quo, create an exception for licensed security workers, and

avoid jeopardizing an apparatus that's already in place. Our workers are a key component in protecting other workers from physical workplace violence. If we extend to them the right to refuse unsafe work under these circumstances, we're going to be dismantling one of the few tools we have that's working right now to protect other workers from workplace violence.

Now, there are, no doubt, some in our industry who oppose that idea. In fact, we have had colleagues say to us, "Gee, you better not ask for a categorical exception, because if we do that, we'll be tacitly admitting that the threat of workplace violence is inherent to the work that our workers do." We said, "What's wrong with that?" The reply we got was, "Well, if we admit that, then the Ministry of Labour people are going to come around and require us to do a whole bunch of things to protect our workers from workplace violence." We replied to that, "Bingo."

Our position in coming here today isn't to make the situation worse for workers in the security industry but, rather, to make it better. Our view is that there is in our industry a group of employers who specifically require their employees to use force in the execution of their duties. If you're in that position as an employer, we feel that this legislation should have a provision which specifically imposes some duties on you as an employer to make sure that you are protecting those workers.

In essence, there are four things that we think that legislation should require those employers to do:

(1) Have clearly articulated use-of-force policies, so that the workers know whether they are or are not expected to get involved in a use-of-force situation.

(2) Conduct risk assessments to determine whether or not your workers need to have protective equipment like slash-proof vests or bulletproof vests or handcuffs.

(3) Make sure that your employees have training on basic things like their legal authority to use force, verbal de-escalation skills—that sort of thing.

(4) If you are one of those employers who expect your employees to use force, you need to provide them with training and current certification on how to do that: arrest and control tactics, force guidelines—that sort of thing.

In conclusion, workplace violence is a really big problem in the economy, but the work that security workers do is a really big part of the solution. Thousands of security workers in this province put themselves in harm's way every day to protect other workers from workplace violence. What we're recommending to the committee, to the government and to the province is that you do two additional things to respond to that fact:

One is to require employers to make a decision one way or the other: Either clearly instruct them that they're not to use force, or, if they're going to require them to use force, make sure to provide them with the necessary training, protective equipment and direction so that they can be safe as workers while they're protecting other workers.

The other recommendation we make is that we not dismantle a system we have in place for protecting other

workers by giving security workers the ability to refuse to do the very thing they're trained and equipped and tasked with doing.

That concludes my remarks.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Robertson. We have a brisk 40 seconds per side. Ms. Jones.

Ms. Sylvia Jones: A quick question: How many members do you have in your organization?

Mr. Brian Robertson: About 600 or so, nationally.

Ms. Sylvia Jones: Thank you.

The Chair (Mr. Shafiq Qaadri): Ms. DiNovo.

Ms. Cheri DiNovo: It sounds to me like your members need to organize a union across the board to protect themselves. Having said that, you raise some very interesting points that bear further study, as far as I'm concerned. I certainly will look into it and take your amendments seriously.

The Chair (Mr. Shafiq Qaadri): Now to the government side: Mr. Dhillon.

Mr. Vic Dhillon: Mr. Robertson, you may be aware that the Ministry of Community Safety and Correctional Services oversees security workers under the Private Security and Investigative Services Act. Would you recommend that these pieces of legislation work together in your industry?

Mr. Brian Robertson: It would be delightful if occupational health and safety legislation and regulatory licensing legislation could be coordinated. It hasn't been our experience that that happens in any jurisdictions, but we think it would be a delightful thing if it did.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Robertson, for your deputation on behalf of the Canadian Society for Industrial Security.

BULLYING EDUCATION AND AWARENESS CENTRE OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter, Ms. Beacock, of Bullying Education and Awareness Centre of Ontario, to please come forward. Welcome, and I respectfully invite you to please begin.

Ms. Marina Beacock: My name is Marina Beacock. I'm a director of a newly registered non-profit organization known as the Bullying Education and Awareness Centre of Ontario.

Currently, we're in start-up phase, getting our organization up and running. We serve all of Ontario and are located in Dufferin county, most recognizable as the town of Orangeville.

While our non-profit status is new, the work we have done is not. It evolved from volunteering our time to help a growing number of individuals who have experienced bullying in the workplace and did not know where to turn for help.

In the coming months, we'll be offering access to a greater number of resources, an extensive network of referrals, and education and awareness workshops to individuals, employers, government, unions and interested groups.

We're affiliated with the Workplace Bullying Institute, which has been doing this work for the past 10 years. They're dedicated to everything that is related to workplace bullying, including lobbying for healthy workplace legislation.

For the purposes and simplicity of this presentation, the term "bullying" will be used from here on, with the intention that it is interchangeable and represents all of the following, but it is not a synonymous term: psychological harassment in the workplace, abuse of power, abuse of authority, psychological violence and violence in the workplace.

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If you turn to your handout, on the first page, the Workplace Bullying Institute provides the following definition of "bullying":

"Bullying at work is repeated, health-harming mistreatment of a person by one or more workers that takes the form of verbal abuse; conduct or behaviours that are threatening, intimidating or humiliating; sabotage that prevents work from getting done; or some combination of the three. Perpetrators are bullies; those ... receiving ... are targets.

"It is psychological violence—sublethal and non-physical—a mix of verbal and strategic assaults to prevent the target from performing work well. It is illegitimate conduct in that it prevents work from getting done. Thus, an employer's legitimate business interests are not met.

"The bully puts her or his personal agenda of controlling another human being above the needs of the employing organization."

I was fortunate to be able to attend the International Conference on Workplace Bullying in Montreal in 2008. At that conference, I heard speakers from all over the world who provided a great deal of research on workplace bullying and the damaging effects on targets. This is a silent epidemic of enormous global proportions.

We applaud the province of Ontario for stepping up to the plate in an effort to join two other Canadian provinces and the federal government by introducing Bill 168. We are in full support of healthy workplace legislation, which includes measures to address workplace violence, workplace harassment and domestic abuse as it relates to the workplace. While this is a step in the right direction, we believe that Bill 168 requires further amendments before it is passed into law, as it falls short in a number of key areas.

In section 1 of the proposed legislation, there are definitions of workplace harassment. The language in those definitions needs to be amended to be more specific. In its present form, it has the potential for employers to be faced with many frivolous complaints. "Workplace harassment" needs to be broadened to include both the terms and individual definitions of "workplace bullying," "psychological harassment," "abuse of power" and "abuse of authority."

The definition of workplace violence also needs to be expanded to include psychological violence in addition to physical violence. Psychological violence is much more prevalent than physical violence and significantly impacts both the psychological well-being of targets and their physical health.

On the next page, you will see the Statistics Canada Ontario labour force survey of 2007. That survey showed that there are 10,362,000 residents of Ontario 15 years of age and older, of which 6,594,000 were employed, 450,000 were unemployed and 3,318,000 were not in the labour force—we don't have current statistics in the province of Ontario. We have used a survey called the WBI-Zogby workplace bullying survey for the same year, 2007. In that particular survey, 7,740 interviews were conducted to create a representative sample of all American adults.

The key findings were: 37% of workers had been bullied, 12% had been witnesses or bystanders of bullying, 72% of bullies were bosses, 57% of targets were women, 62% of employers ignore the problem, 45% of targets suffer stress-related health problems, 40% of bullied individuals never tell their employers it is happening and 3% of bullied people file lawsuits. These are American statistics, but we feel that this survey is a fairly accurate reflection of what Ontario would look like.

Using those statistics and applying them to the Ontario labour force survey would mean that in Ontario we would have 2,440,000 employed workers who have been bullied at their workplace, 791,280 employed workers who were witnesses or bystanders of bullying, 166,500 unemployed workers who in the past have experienced bullying at work and 54,000 unemployed workers who have been witnesses in the past. These figures are astronomical. They represent almost half of the workers in Ontario.

On the next page, you will see damages that relate to bullying. Work shouldn't hurt, and yet the emotional, psychological and health damages—and I won't read them all, but I will focus on a few key ones: loss of sleep, fatigue, post-traumatic stress disorder, nightmares about the bully, panic attacks, anxiety, clinical depression, self-destructive behaviours such as drug and alcohol abuse and workaholism. Suicidal thoughts are on that list as well. Physical stress in relation to bullying: heart attacks and high blood pressure; stress headaches; migraines; reduced immunity to infections, which means people would have more flu and colds; and neurological changes in the brain structures and neurotransmitters.

Social damages, on the next page: Co-workers are isolating the targets because they themselves are afraid that they are going to be the next target of the workplace bully. There's abandonment by co-workers. There's wavering support from family. The stress has been so severe that it has caused separations and divorce by immediate family members and abandonment by friends outside of work.

Finally is economic and financial damages: People are taking sick leaves, they're going to their doctor, they're

taking unpaid leave, they're taking vacation times just to deal with these things. They're exhausting their personal savings. They have credit problems because they overextend their credit cards and lines of credit when their income is cut. When their disability payments run out and the money runs out, their house is sold, their assets are liquidated, they cash in their retirement savings plans, and some are even forced into bankruptcy.

When bullying in the workplace occurs, targets are not at fault. They do not invite this type of toxic and harmful behaviour and have no way of making it stop, because the employer controls the work environment. It's about time bullying in the workplace is recognized as being a forerunner to what can and does lead to physical violence in the workplace. This is a silent epidemic. It's responsible for a vast number of workplaces in the province that are toxic and harmful to employees. If bullying is ignored or not appropriately dealt with by employers and strong legislation, this can lead to people being pushed over the edge, resulting in violence in the workplace such as suicides and homicides.

WBI-Zogby survey findings indicate 62% of employers ignore the problem. We are recommending that employees who have situations or complaints in connection with bullying in the workplace be provided with unrestricted access to the services of an independent investigator, and that needs to be in the legislation.

When investigations of complaints are done internally by human resources, health and safety committees or representatives, it is more difficult for the internal investigators to be objective, since the bully, the investigator and the target are all paid by the same employer. This is like having a fox guarding the henhouse.

Lastly, provisions need to be made in legislation that the results of investigations into complaints in connection with bullying are open and transparent. Too many are buried by employers who insist employees sign gag orders in order to settle disputes.

In conclusion, we support healthy workplace legislation such as Bill 168 to protect all workers in the province of Ontario, and we recommend that the Standing Committee on Social Policy take these recommendations under advisement. Bill 168 needs to be further amended and broadened to include bullying in the workplace, psychological harassment in the workplace, abuse of power and abuse of authority in the workplace, psychological violence and violence in the workplace. If 62% of employers ignore the problem, then complaints need to be handled by an independent investigator.

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Lastly, upon completion of investigations, decisions should not be hidden by gag orders; they need to be open, transparent, and the information accessible to the public. We recommend that Bill 168 be further amended and significantly strengthened before it is passed into law. Let's make Ontario's Occupational Health and Safety Act the very best that it can be. Let it be the model for the other provinces and territories to follow.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Beacock. Nous commençons avec le NPD. Monsieur Marchese, une minute, s'il vous plaît.

Mr. Rosario Marchese: Thank you. Is it Marina?

Sorry.

Ms. Marina Beacock: Yes.

Mr. Rosario Marchese: Marina, you made some very strong arguments. I'm not sure from what I heard that I disagree with anything you said. I'm assuming we will be making many of the amendments that you have suggested. I'm assuming many others who have deputed probably are making similar kinds of comments. Thank you very much.

Ms. Marina Beacock: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. The government side: Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much, Ms. Beacock. Could you give a bit of a background about your organization and exactly what types of services you provide?

Ms. Marina Beacock: As I mentioned in the introduction, we are a newly minted non-profit organization, so we're in start-up phase right now. Once we're actively up and running, we are going to continue what we've been doing on a volunteer basis, and that's helping people who contact us. They don't know where to go or where to turn. We're going to be providing them with resources where they can get some help. That will include medical services—not directly from ourselves, but referrals—potentially legal counselling services, whatever it is that they need in order to help in their situation.

We'll be doing awareness workshops and educational workshops because this—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Dhillon, To you, Ms. Jones.

Ms. Sylvia Jones: A quick question, Marina: I'm gathering from your last page that you are not supportive of the workplace coordinator that is currently being recommended in Bill 168. You want to take that outside of the workplace?

Ms. Marina Beacock: I could see a coordinator being perhaps the first point of contact in the workplace.

Ms. Sylvia Jones: Or an educator.

Ms. Marina Beacock: A coordinator or an educator. Perhaps the coordinator can resolve smaller disputes, but where there are serious allegations and complaints, we feel that investigations need to be handled externally.

One reason we feel that way is that the people who are coming to us are fearful. They don't know who to trust—

Ms. Sylvia Jones: Sorry, and separate from the Human Rights Commission? Because that's the option you have right now.

Ms. Marina Beacock: That would be something that we have not discussed, but I did hear the presentations—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones, and thanks to you, Ms. Beacock, for your deputation and written submission on behalf of the Bullying Education and Awareness Centre of Ontario.

CANADIAN UNION OF PUBLIC EMPLOYEES

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter to please come forward: Mr. Fred Hahn, Ontario secretary-treasurer of CUPE, Canadian Union of Public Employees, and colleagues. You know very well the protocol here. Please do introduce yourselves for Hansard, and I invite you to begin now.

Mr. Fred Hahn: Thank you. My name is Fred Hahn. I'm the secretary-treasurer of CUPE in Ontario. With me today are Blain Morin, who is an occupational health and safety staff representative with our union, and Archana Rampure, who is a research representative with our union.

We have a formal presentation in writing which we'll also distribute, so there's some more detailed information there, but I'm going to do a bit of a summary for the committee now.

We welcome the introduction of Bill 168, on behalf of our 220,000 members of the Canadian Union of Public Employees who work in the broader public sector. We have members who work in health care, hospitals and long-term-care facilities, municipalities, hydro utilities; members who are paramedics, librarians, social service workers in child care and developmental services; and in all parts of the education sector, from early learning, elementary schools and secondary schools right up to universities all across the province.

Since the 1980s, CUPE Ontario has made deputations to several provincial ministerial committees about the increasing aggression and violence experienced by our members in workplaces across the province. Due to the nature of their work, many of our members are exposed to varying forms of violence, from verbal and written aggression, acts of bullying and harassment, to direct physical aggression and violence from members of the public, co-workers, clients and their families.

CUPE Ontario is also deeply concerned by the increasing instances of psychological, physically aggressive and verbal acts of violence aimed specifically at racialized workers. We think that the act would be much more powerful if it addressed these issues separately.

We're convinced that workplace downsizing and restructuring, combined with the increased reliance on part-time and casual staff by employers, is actually fuelling workplace violence. The devastation to productivity that workplace violence has been documented, time and again, to result in has real economic impacts that negatively impact us all—and they're never good. But they're even more problematic in our current economic climate.

In our response to the Ministry of Labour's consultation before the bill was tabled, we'd emphasized that we saw a real need for the Occupational Health and Safety Act to be amended to include workplace violence and harassment as occupational hazards. We had also urged the Ministry of Labour to bring forward the issue of domestic violence and its impact at work under the purview of these amendments. We're very glad to see

that that is how the ministry has chosen to proceed, but we're here today in hopes that Bill 168 can be further strengthened in order to actually complete the critical task of protecting Ontario's working people.

CUPE Ontario, like the human rights commission and other deputants, is asking that Bill 168 be broadened to encompass all forms of violence, including physical acts, bullying, and verbal and psychological aggression, and that it should allow for the right to refuse unsafe work based on all of these forms of violence. The broadening of the act covers these forms of violence, and with a comprehensive definition that would include verbal assault, harassment, bullying, psychological trauma, domestic violence in the workplace, as well as physical acts of violence and aggression, would send the strongest possible message about the complete unacceptability of workplace violence and harassment. The act needs to explicitly define harassment and to include single events. It needs to explicitly cover all workplaces in all provincial sectors, including the homes of clients or other off-work-site locations.

Specific recognition in the act that violence is an occupational hazard and inclusion of the precautionary principle both in the act and in regulations will ensure that the application of violence as a workplace hazard is equally important to others.

We think that the standing committee needs to ensure that there's an obligation on employers to actually protect workers against violence in the workplace—as opposed to control risks, which is what the bill currently says. It's not enough to assess risks or to develop policies and programs. Protection must enter the bill as an actual obligation.

The section on harassment is much weaker than the section on violence. For example, there's no requirement to control the risks of harassment. Harassment is on a continuum which can lead to escalations and other forms of violence, and this just isn't good enough for the workers of Ontario.

Further, we're convinced that strong reprisal protection for workers must be enshrined in the act to ensure that employers and no others intimidate workers from reporting incidents of harassment or violence. Our members would like to see specific reference to meaningful consultation and participation of worker representatives on workplace joint health and safety committees in dealing with workplace harassment and violence.

It's very important that employers will be required to develop and annually review policies on harassment and violence, but they must also be made to develop and maintain programs to implement these policies. Bill 168 should clearly and explicitly state what these policies would include. Policies should include commitment statements; a definition of workplace violence; the roles and responsibilities of employers, supervisors, health and safety committees, health and safety representatives and workers; as well as a commitment to debrief a worker who has been exposed to violence and harassment and to provide them with other required supports and services.

We're concerned that the bill, in this regard, is too vague with reference to simply developing and maintaining policies and programs against harassment and violence. We think the bill must include some parameters for such policies and programs to be truly effective.

I've outlined some general amendments that we'd like to see and that we think are necessary in Bill 168 to make it an even more effective mechanism to better protect workers in the province of Ontario. Specific changes to language are included in our written submission.

In closing, I'd like to note that in the main, we're supportive of the introduction of this bill and its amendments. We believe that it is a good first step. But changes to law like this do not happen very often, and we think that the government has a real opportunity to get it right. We simply want to make sure that this bill is as comprehensive as possible and that it affords the protections that all working people in Ontario deserve. We believe very strongly that when workers are afforded such protections, we will all benefit.

Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hahn. We have about two and a half minutes per side, beginning with the government. Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much for your presentation. In your view, what would be the most correct definition for workplace violence?

Mr. Fred Hahn: Well, there are several definitions of violence. I think that in our brief—I'm trying to remember if we include a definition that we would prefer.

Mr. Blain Morin: I do believe that there was a European definition that we brought forward in our original brief. As well, we made reference to the brief that was passed by the federal government—so the federal code definition, which included psychological components.

Mr. Vic Dhillon: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Dhillon. To the PC side: Ms. Jones.

Ms. Sylvia Jones: You make reference to "all provincial sectors, including the homes of clients and other offsite workplace locations." How would you envision that protection actually showing up in legislation?

Mr. Fred Hahn: Well, the reality for many of our workers who work in people's homes is that those homes, while they are of course those people's homes, are work sites for our members. There would have to be protections enshrined for those workers. There are a variety of ways in which that could happen, and they would have to be decided through the joint health and safety committees.

It's not about infringing on the individual's home; it's about providing mechanisms for the worker to be able to contact people outside, should they be subject to some form of harassment or violence.

Ms. Sylvia Jones: They have that now with the right to refuse, correct?

Mr. Fred Hahn: Well, the right to refuse can be a complicated right in dealing with people, but the reality is that what's being imagined in this amendment to law is

that it's important to make sure that it covers all workplaces. For our members and for many other workers, it's important to understand that workplaces are not just work sites; sometimes they're people's homes.

Ms. Sylvia Jones: Okay.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones. Mr. Marchese.

Mr. Rosario Marchese: Fred, like the previous speaker, you talked about the need to broaden the definition to include psychological harassment, psychological trauma or bullying and verbal acts of violence. I think it applies. Did you say that it needs a separate act to be dealt with, or that it can be dealt with in this bill by simply redefining what should be included? Is that what you were saying?

Mr. Fred Hahn: We believe that it can be dealt with here. As long as the definition is broadened and clearly defined, it can be dealt with in this piece of legislation,

and that's what we would prefer.

Mr. Rosario Marchese: I agree with that. I'm assuming you met with staff of the ministry before—ministerial staff, political staff possibly—and you presented these views. Were they receptive at all, or did they say, "Yes," "No," "It's hard"—what did they tell you before?

Mr. Fred Hahn: Do you want to do it, Blain?

Mr. Blain Morin: I think that we had some very good discussions with ministry staff around the policy advisement. They were open, and we did have lots of discussion about the federal definition. There seemed to be a barrier in including the psychological components of workplace violence. The psychological aspects, those harassments—it just didn't seem that we could expand upon that or make good enough headway.

Mr. Rosario Marchese: So what's the barrier, sorry? Mr. Blain Morin: The psychological components, it

would appear.

Mr. Rosario Marchese: It's a barrier to the

government, to the minister, to this bill, to what?

Mr. Blain Morin: I guess to the definition. It would be a barrier if we don't include it. I guess when we discussed it, we discussed a lot of things—psychological harassment—but again, we did the split definition. I guess we didn't make a good enough argument, but we feel very strongly that that should still be in there.

Mr. Rosario Marchese: I'm not the critic; Cheri DiNovo is the critic. I'm sure that we will be introducing amendments that will reflect this. It seems to me eminently reasonable, and we hope that the members are

going to accept it. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese, and thanks to you, Messieurs Hahn and Morin and Ms. Rampure, for your deputation on behalf of

CUPE, Canadian Union of Public Employees.

I would now just advise my colleagues that, first of all, we will invite our next presenters to please come forward momentarily, but our presence is due in Parliament for a vote which takes place in eight minutes exactly. Until such time as it is completed, committee is recessed.

The committee recessed from 1750 to 1804.

ONTARIO PROFESSIONAL FIRE FIGHTERS ASSOCIATION

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I reconvene the committee for our next presenters: Messieurs McKinnon, Doherty, Ashfield and possibly others, on behalf of the Ontario Professional Fire Fighters Association.

Gentlemen, I invite you to begin now.

Mr. Mark McKinnon: Thank you very much. Just for the record, my name is Mark McKinnon. I'm the executive vice-president of the Ontario Professional Fire Fighters Association. I have with me, to my left, Hugh Doherty, chair of the Ontario Professional Fire Fighters Association human relations committee. He is also cochair of a joint health and safety committee here in Toronto and a fire captain. Kevin Ashfield, on my right, is a member of the Ontario Professional Fire Fighters Association health and safety committee. He's also a firefighter and a member of a joint health and safety committee in Toronto, where he works. With us also, but not joining us up front, is Jeff Braun-Jackson, our office manager and researcher. Unless questions get really tough, the three of us will try to deal with them. 1810

The Ontario Professional Fire Fighters Association represents approximately 11,000 full-time professional firefighters across Ontario. Our members provide emergency response, training, prevention, inspection, public education, fire investigation, emergency communications and maintenance for much of Ontario's fire services.

Our members also represent 80 locals or associations—77 municipal fire departments, two airports and one industrial—and we're all chartered with the International Association of Fire Fighters. Relying upon our most recent Canada census data for 2006, our 77 municipal firefighter associations represent and respond to the emergency needs of approximately 81% of Ontarians. As I said earlier, members of the Ontario Professional Fire Fighters Association sit on several standing committees. Two of these committees—our occupational health and safety committee and our human relations committee—focus on the issues contained within Bill 168.

As an organization, I should stress that the OPFFA takes seriously its commitment to the health, safety and well-being of our members and a workplace free of harassment.

As a bit of background, we see that Bill 168 has three goals: (1) to clarify the obligations and rights of workers through policies and programs with respect to violence and harassment in the workplace, (2) to show employers what minimum standards are expected to keep workplaces free of violence and harassment and (3) to provide workers the right to refuse work if their situation is unsafe as a result of workplace violence. These goals are based on the tragic deaths of Theresa Vince and, as we heard today, Lori Dupont, women who were brutally murdered by their colleagues in their places of work.

Workplace violence and harassment is intolerable in any form, and we laud the Minister of Labour in his efforts to curtail the harms visited upon workers across this province. However, we do have a couple of concerns with regard to the legislation in its current form.

The entire concept of workplace health and safety is based on the foundation of joint responsibility between the worker and management, employers and employees. The current Occupational Health and Safety Act, as well as Bill 168, outline the responsibilities of employers, supervisors and employees as well. However, what we see as noticeably absent from the proposed bill is the joint nature of developing some of the most sensitive health and safety workplace policies we have witnessed.

Bill 168 calls on the employer to conduct all the critical tasks, such as developing policies regarding workplace violence and harassment, and setting a schedule for the review of such policies; developing and maintaining a program to implement these policies, which includes the reporting and investigation of risks; assessing the risk; and providing a worker with information and instruction regarding the policy and program with respect to workplace violence.

When it comes to the employer's responsibility to engage employee representatives, it is only to advise them after the assessment and the reassessment of risk. Yet, under the duties respecting workplace violence, the responsibilities of the supervisor, as set out in section 27 of the act, apply. This is important in the fire service, as we follow a paramilitary structure. As such, our supervisors are typically part of the same bargaining unit as the majority of our members.

This is a critical concern, given the obligation to share personal information respecting a person's history of violence. However, there are limits to the disclosure of this personal information to the point of what is "reasonably necessary." We would suggest that the term would have a considerable amount of latitude in its interpretation, depending on the person disclosing the information.

The bill extends authority to the Lieutenant Governor to make regulations, including the designation of a work-place coordinator with respect to workplace violence and workplace harassment, and also to amend section 43 of the act regarding employees with a limited right to refuse work.

The question will be raised as to what latitude the employer will have in the designation of the coordinator's position. Will it be considered a bargaining unit position and contain bargaining unit work? Can a bargaining unit member refuse the designation? Will the union or the association be consulted prior to any of the new working conditions associated with the position?

Second, we have concerns with respect to the right to refuse work. Invoking this right results in an investigation where the worker is removed from the unsafe situation until the investigation is completed. Many of our fire service workplaces are small, with very few employees on duty and having the responsibility to respond in an emergency vehicle. Further, it is important to note that in some cases where the fire service has experienced workplace violence, it has involved volunteer or part-time firefighters. Will volunteer and/or part-time fire-

fighters also be considered employees for the purpose of workplace violence and harassment?

The OPFFA strongly suggests that, given the sensitive nature of these proposed amendments, the employer "shall" work through the joint occupational health and safety committee, where one exists, or in the absence of a joint occupational health and safety committee, through a committee composed of an equal number of representative members—employee and management—or at least a voluntarily recognized employee representative, with respect to the development of policies and programs respecting workplace violence and harassment.

Further, we believe the employer "shall" work through the joint occupational health and safety committee for the investigation and the development of recommendations that flow from these or any such events that may occur with respect to Bill 168. The designation of the workplace coordinator must be done in consultation and agreement where a union, association or voluntarily recognized employee representative exists.

Full specialized training must be provided to members responsible for investigating acts of workplace violence and harassment, especially when supervisors and employees are both within the same bargaining unit. Also, all employees should receive training as to their rights and responsibilities as they relate to violence and harassment in the workplace.

Finally, consideration must be given to unique workplaces when developing regulations with respect to the right to refuse work, i.e. emergency vehicles, small work locations etc.

In conclusion, the OPFFA supports this government's initiative; however, we feel there needs to be greater recognition of the inclusion of employee representatives, where they exist, to be successful in the implementation of Bill 168. The use of joint occupational health and safety committees has proven successful in joint acceptance and advocacy of workplace safety under the current act, and we believe the same vehicle needs to be utilized in these circumstances.

Lastly, we would suggest sector-specific consultation in those areas with unique workplaces and circumstances respecting the right to refuse work prior to the creation and enactment of a regulation. Thank you for the opportunity to say these words. The three of us are obviously available for questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. McKinnon. We have two minutes per side, beginning with Mr. Hillier.

Mr. Randy Hillier: Thank you very much for being here. I want to expand a little bit on your discussion regarding privacy and your concerns about the sharing of personal information. We can see that it's going to be very difficult to put this in a prescribed formula, which is what we're always trying to do with legislation. How do you see this actually working in the fire services, where people will have to know—if they do know personal information—and will have to divulge that personal information to other people in the fire crew? Do you see

any concerns or difficulties as far as morale and everything else within the fire crew?

Mr. Mark McKinnon: My experience has been from human relations. If we have an issue in some workplaces, depending on the policies that are implemented by the employer in conjunction with the association, if you take an individual who, say, has an alcohol issue with violence, as he or she goes through the appropriate rehabilitation process and meets certain targets for his or her return to work, my experience has been that if those targets are addressed and met, and you sit down with the crew and say, "Here are the targets they met," we don't need to get into what that individual has done outside of that. We urge people, if they see changes in behaviour, to immediately contact the employer officer in charge. 1820

Mr. Randy Hillier: And what about any concerns one phrase in here is that if the employer—and again, this will be a little bit more confusing, whether it's a supervisor-

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier, Mr. Marchese.

Mr. Rosario Marchese: One of the questions that Marina Beacock raised was that you should have an outside investigator to investigate acts of violence, bullying and all those things because to have an internal person is problematic. It creates problems. Do you have any suggestions or opinions about that?

Mr. Mark McKinnon: We believe that with a joint committee, like a joint occupational health and safety committee, with the confidence of the employer-employee relationship and management-union relationship that exists in a joint health and safety committee, if you can deal with matters internally, you're further ahead. When we can't deal with things internally, then we would see that as the role of the human rights commission and the tribunal.

Mr. Rosario Marchese: Okay.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. To the government side, Ms. Sandals.

Mrs. Liz Sandals: Thank you for coming, Mark and colleagues. I'm a little bit confused around the right to refuse. I would have thought that for firefighters the workplace is inherently dangerous and you're exempted from the right to refuse because the workplace is dangerous. Are you concerned that right to refuse, because of harassment issues, could be layered over that normal anticipation of an exemption?

Mr. Mark McKinnon: I'll give a brief answer to that and then allow my colleagues to expand. If in a small fire service—Kapuskasing—where there may be two or three people on duty at any given time, you come into your workplace and there's an issue of harassment or, God forbid, violence and you have to separate and can't have those people working together, you then do not have an emergency apparatus that's available to respond.

Mrs. Liz Sandals: You need a full crew to go on the

truck when the bell rings.

Mr. Mark McKinnon: Yes, and then our right to refuse exists when the bell goes, and then, regardless of what's going on, whoever's in the station or who's been in response-

Mrs. Liz Sandals: The crew needs to get on the truck and go. Is this something where we need to capture this unique circumstance in legislation or is this the sort of thing where, if there were policy guidelines around this capturing, that would work?

Mr. Mark McKinnon: One of our requests, when we get into the right to refuse and setting regulations, is that there be sector-specific discussions so we can sit down with and maybe involve the fire chiefs' association, our association, and come up with a resolve that we all agree is the best thing for number one, the citizen.

Mrs. Liz Sandals: So we don't need to sort out legislation-

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Sandals, and thanks to you, Mr. McKinnon, Mr. Doherty and Mr. Ashfield and your colleagues on behalf of the Ontario Professional Fire Fighters Association, for your presence and deputation today.

Mr. Mark McKinnon: Thank you for your time.

EMPLOYMENT DISPUTE RESOLUTIONS

The Chair (Mr. Shafiq Qaadri): I now call upon our final presenter of the evening, Ms. Campagna, of Employment Dispute Resolutions, and colleague. Welcome and please begin.

Ms. Carin Campagna: My name is Carin Campagna. I'm a paralegal who represents employees in wrongful or constructive dismissal disputes and workplace discrimination before the Ontario Small Claims Court and the Human Rights Tribunal, respectively.

First, I commend the ongoing commitment of all those who continue to advocate for the prevention of domestic violence and violence against women in the workplace. Years ago I was a volunteer for two women's shelters and honoured by the city of Toronto and the Family Service Association for my role in inviting Toronto Star reporter Catherine Dunphy to write and enlighten the public about the poverty issues women face in the shelters as they embark on their journey to build a safe and productive future for themselves and their children. What's not included in my submission is that I'm also a 12-year survivor of domestic abuse until 1993, when I was able to leave that marriage.

I relay this now so that I'm not misjudged as I convey that this bill that I thought was originally intended to protect all six-million-plus employed Ontarians from workplace violence, harassment and company bullying as reflected in Bill 29 has somehow evolved into the prevention of domestic violence against women in the workplace bill, in response to the Lori Dupont tragedy, combined with the Ontario unions' prevention of violence against health care, social, community and educational service workers bill.

However, there are millions of employees who have never encountered, and never expect to encounter, workrelated physical harassment, threats, stalking and/or domestic violence from clients, students, patients or customers in their daily course of operation. The harassment my clients typically experience is limited to psychological harassment: bullying, overt and subtle, demeaning remarks and belittling comments from an unruly employer or manager who thrives on humiliating their employees.

Nor is it mandatory for all companies to register for WSIB coverage, and in so saying, Bill 168 is of no working benefit to the nine categories of industries specifically excluded from WSIB coverage or the over 100 industries that are omitted from WSIB coverage, although some may apply for the same. Therefore, those working in real estate or law firms, travel agencies, barber and beauty shops, photography, banks, trust companies and more will continue to apply for benefits through Service Canada and HRSDC. In this respect, Bill 168 will be more counterproductive than productive to these industries and its employees as they all attempt to comply with the bill's unrelated provisions.

While Ontario unions' issues certainly deserve and merit legislation, it should not be at the exclusion of the rest of Ontario employees who work each day at their \$10-an-hour WSIB-excluded jobs while inventing new ways to avoid the company bully.

Other presenters may have already commented on the enabling effect this bill will have on workplace bullies given the vagueness of the term "unwanted comments," or that the right of work refusal in Bill 168 is not extended to employees who fear psychological harm.

I ask whether non-unionized employees will maintain their rights to a civil remedy for general damages or damages in tort in wrongful or constructive dismissal disputes, or will their rights to a civil remedy be waived for having been compensated for mental distress through WSIB?

I ask how Bill 168 will protect workers from code violations once a claim is filed for work-related psychological harm, a crisis wrongfully passed over in this bill. Once an investigation is launched to examine allegations of harassment effecting work-related mental distress, how will Bill 168 protect a worker's privacy, dignity and self-worth in compliance with the code? As importantly, what privacy guidelines and procedures will the employer be bound by to prevent any unwarranted reprisal from the harasser upon their return to the workplace?

Statistics on workplace bullying, as reported by Dr. Gary Namie, reveals that 39% of employees have experienced workplace bullying. And I have a few different statistics from an earlier presenter: Targets endure bullying for almost two years before filing a complaint; targets have a 70% chance of losing their jobs; 17% of targets have to transfer to other jobs; only 13% of bullies are ever disciplined or terminated; 71% of bullies outrank their targets; bullying is three times more prevalent than sexual harassment; as many as 10% of suicides may be related to workplace trauma caused by bullying; and 50% of victims still suffer burnout after five years.

Following that, she's already mentioned the rest of the bullets, so I'll move on.

I am confident that Ontarians are demanding a bill for the prevention of violence, harassment and bullying in the workplace for all employees, many of whom are bullied to the detriment of their health and welfare, and whose children wonder why their mother cries every day or why their father won't get out of bed anymore.

Ontarians deserve a bill that will reflect the rights of all its workers—no worker left behind. Failing to insert those two magic words, "psychological harassment" or "psychological harm," into the definition of harassment, there is no bullying prevention in this bill—in which case, Bill 168 would appear to be a wolf in sheep's clothing.

As reported in 2001, 26.8% of Ontario's population is foreign-born. Many of them immigrated here to escape violations in their own countries. Show this most vulnerable community that our government will not let them down. Give them a bill that will protect them, too.

Give Ontario the more pragmatic legislation of Bill 29 that speaks to both physical and psychological harm, inclusive of an employer's duty to prepare guidelines to identify potential work-related harassment and domestic violence in the workplace as set out at section 49.1. In fact, Bill 29 speaks to the majority of concerns reflected in OPSEU's, CUPE's, CAW's, RNAO's and OFL's submissions to the government's consultation paper including, but not limited to, the right of work refusal, safe place investigative procedures, violence prevention training, single event harassment and an employer's duty to prepare programs and policies reflecting the same.

I'm moving on to page 4 because I think my presentation will exceed the 15-minute limitation. It's as if Ontario's unions formed an alliance to develop a common wish list without really thinking through how this wish list would realistically translate into the workplace. Their submissions, speeches, media events and campaigns describe work-related violence as the epidemic of the day. I suggest that the violence analysis be broadened to include the epidemic of workplace bullying, and in so saying, commit to equal consideration to changes in legislation for employee protection against psychological harm and company bullying in the workplace.

The last few years have seen a dramatic increase in the number and length of claims for workplace-related mental disorders at not only a financial cost to the employer and the economy, but an emotional cost to the employee and his/her family as well.

Current WSIB decisions use the objective "average worker test." If the "average worker" does not view the conduct of the bully as mentally stressful, then there will be no entitlement to benefits without additional medical documentation in support of the claim at cost to the same. As it is, I understand only 40% of WSIB claims for mental distress are approved. How will Bill 168 improve these results?

With OPSEU reporting that 43% of their community sector workers—I'm on page 5 now, paragraph 3—experienced work-related violence in a one-year period, combined with the Minister of Labour reporting last April that 39% of health care workers experience violence on a daily basis, is it any wonder that the gov-

ernment is nervous about inserting the words "psychological harassment" into any bill for fear of opening the floodgates for WSIB claims for work-related mental distress? Excluding this crisis from Bill 168 is not the response Ontario is calling for.

Apart from company harassment policies and procedures and the OHSA, there's been an implied term of employment at common law for over 13 years that defines an employer's obligation to ensure a safe, dignified and respectful environment to its employees, yet company bullying and psychological harassment still exists. We have a zero tolerance for violence in our schools; we have a zero tolerance for guns, gangs and violence in our communities; we have a zero tolerance for discrimination. The workers of Ontario need a bill that will reflect a zero tolerance for workplace bullies. We must establish a zero tolerance for bullies policy.

Discipline, educate or fire—I have in my submission, just fire them, but I had to give it some reconsideration—the bully and give all Ontarians a safe place to work. Give all workers the confidence that the government of

Ontario has got their backs.

Insert the definitions of "workplace harassment and violence," inclusive of the term "psychological harassment or harm" or "psychological well-being," into not just the Occupational Health and Safety Act, but also into the Canada Labour Code, as both Bill C-487 and C-451 proposed, into the Employment Standards Act and the Labour Relations Act, to protect all Ontarians from physical or psychological injuries regardless of whether they are federal, provincial or unionized employees. Or give the unions Bill 168 to rightfully protect their health care, social, community and educational service workers at risk. But please give the rest of us back Bill 29.

I recognize that the inclusion of union-specific sections are reflected in Bill 29 too, but Bill 29 still remains, to me, the more comprehensive bill that will best serve Ontario as it works towards legislation that will reflect policies and procedures to protect its workers against harassment, violence and company bullying in the workplace.

Thank you for your time.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Campagna. We've about a minute or so per side, beginning with the NDP. Mr. Marchese?

Mr. Rosario Marchese: Thank you, Ms. Campagna. You have to admit, the Chair pronounced your name beautifully, didn't he?

Ms. Carin Campagna: Excellently, I usually get "Champagne," which is also—

Mr. Rosario Marchese: —equally beautiful, but it's not your name.

Ms. Carin Campagna: Well, it's better. "Carin Campagna" is the correct pronunciation, but it's close.

Mr. Rosario Marchese: I got it.

I just wanted to support what you've been saying—and you're not the only one, as you've heard, because you've been here for a while. Most of the other folks are saying that we need to expand the definition of what should be included, and I agree with that absolutely. We

will be making amendments to that effect and we hope the government will accept them.

Ms. Carin Campagna: I'm never clear about how many people are supportive of that because I'm all by myself. I don't belong to any groups and I don't have a lot of opportunity, apart from the employment lawyers—so I was really appreciative to hear almost everybody express that same opinion.

Mr. Rosario Marchese: Thank you.

The Chair (Mr. Shafiq Qaadri): To the government side: Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much for your presentation.

I just wanted to clarify that Bill 168 provisions will be included in the Occupational Health and Safety Act, which would mean that all employees covered by this act will be covered by Bill 168.

As well, we've heard from many groups about the different types of harassment. Assuming that the different types of harassment definitions are clarified, would that

address some of your concerns?

Ms. Carin Campagna: I'm not a lawyer, so I'm not as legal-minded as some of the people who are lawyers or are in employment law firms. What I would need to see is that my clients, who have little access to justice because they're of limited income—they make \$10 an hour—that there's not a two-tier. Until I try my first claim, I'm not going to know if it's going to work or not.

The Chair (Mr. Shafiq Qaadri): To the PC side: Ms.

Jones.

Ms. Sylvia Jones: Just a quick question: You mentioned that you are a paralegal who represents employees in—

Ms. Carin Campagna: Oh, I'm sorry; I'm blind as a bat. I was looking to see who was speaking to me.

Ms. Sylvia Jones: I understand you're a paralegal.

Ms. Carin Campagna: Yes, I am.

Ms. Sylvia Jones: Where are the majority of your clients from? I'm assuming they're non-unionized?

Ms. Carin Campagna: No, I can't take unionized clients, although I do have union people calling all the time with questions about the way their union is taking too long to handle a case, or questions in general. But no, I can't take union; union is a law onto itself. My clients are just the average \$10-, \$12-an-hour workers. Their average age is 35 years old. I take them from Pickering to Hamilton. The majority of my cases, probably seven out of 10, involve workplace bullying. I tell them all the time, "If it goes to court, you had to have taken it to your supervisor or the court will ask 'What did you do?'" And if the court hears—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones, and thanks to you, Ms. Campagna, for your deputation and your submission on behalf of the Employment Dispute Resolutions group.

If there's no further business before the committee, I'd like to thank all members and advise them that we are adjourned for further hearings until Monday, November 23, in this room at 2 p.m.

The committee is adjourned.

The committee adjourned at 1833.



STANDING COMMITTEE ON SOCIAL POLICY

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Official Report of Debates (Hansard)

Monday 23 November 2009

Standing Committee on Social Policy

Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace), 2009

Chair: Shafiq Qaadri Clerk: Katch Koch

Assemblée législative de l'Ontario

Première session, 39^e législature

Journal des débats (Hansard)

Lundi 23 novembre 2009

Comité permanent de la politique sociale

Loi de 2009 modifiant la Loi sur la santé et la sécurité au travail (violence et harcèlement au travail)

Président : Shafiq Qaadri Greffier : Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Monday 23 November 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Lundi 23 novembre 2009

The committee met at 1402 in committee room 1.

OCCUPATIONAL HEALTH
AND SAFETY AMENDMENT ACT
(VIOLENCE AND HARASSMENT
IN THE WORKPLACE), 2009
LOI DE 2009 MODIFIANT LA LOI
SUR LA SANTÉ ET LA SÉCURITÉ
AU TRAVAIL (VIOLENCE ET
HARCÈLEMENT AU TRAVAIL)

Consideration of Bill 168, An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace and other matters / Projet de loi 168, Loi modifiant la Loi sur la santé et la sécurité au travail en ce qui concerne la violence et le harcèlement au travail et d'autres questions.

Le Président (M. Shafiq Qaadri): Chers collègues, je rappelle à l'ordre cette séance du Comité permanent de la politique sociale. I call to order this meeting of the Standing Committee on Social Policy.

As you know, we're here to consider Bill 168 and hear from Ontarians with reference to An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace and other matters.

We have, of course, a number of presenters, a full house. I'd remind my colleagues and those listening that they will have 10 minutes in which to make their presentation, which, as I say, will be enforced with military precision. Any time remaining within those 10 minutes will be distributed evenly amongst the parties for questions, comments and cross-examination.

STOP FAMILY VIOLENCE: IT'S EVERYBODY'S BUSINESS

The Chair (Mr. Shafiq Qaadri): I would therefore now invite His Worship the mayor of Pelham, Dave Augustyn, who represents the organization It's Everybody's Business. Welcome, sir. I'd invite you to please officially begin, and if you have any colleagues, please, if they do speak, have them introduce themselves for the purposes of Hansard permanent recording.

I invite you to begin now.

Mr. Dave Augustyn: Thank you very much, Mr. Chair. It's a real pleasure and honour to be here. As you mentioned, I'm the chair of Stop Family Violence: It's Everybody's Business, which is a Niagara regional task force charged with a Niagara solution to prevent the effects of domestic violence on the workplace.

With me today are some members of that task force. They include regional councillor Brian Baty, who is the chair of the government sector; Richard Ciszek, who is a detective sergeant with the Niagara Regional Police Service for victims' services; John Swart, who is the chair of our business sector for this task force and a retired businessman; and Susan Speck, who is the project coordinator for the task force.

Before you today we have a slide show presentation—I'll go through rather quickly on this—that we would tend to use when we're talking to employers about the importance of preparing for domestic violence at the workplace. As I mentioned, Stop Family Violence: It's Everybody's Business is a made-in-Niagara solution run by volunteers. It's a joint project with the Niagara regional police and the two shelters in the Niagara region, along with the community. It is supportive of the provisions on domestic violence in Bill 168. The main reasons are because of the concentration on costs, and as you look through our presentation, that's what we're dealing with today. There are certainly costs to individuals, costs to society and business costs.

The first few slides talk about the impact in Niagara of family violence and domestic violence. The number of women and children who sought refuge at women's shelters in 2008 was 578. Another 183 were turned away because the shelters were full. Some 18,000 women and children have lived at Niagara shelters since 1977; 50% of them were children. Last year, 4,500 women called the women's shelter 24-hour crisis line because they were in crisis. And since 1997, there have been 17 homicides, leaving four children motherless as a result.

1410

It's said that women's shelters are the only safe emergency shelters for abused women and children in Niagara region, and that is extremely true. Some 20% of the family and children's services caseload in Niagara, which is the CAS, is due to domestic violence. We've calculated some of the costs to society for these types of services: \$3.2 million for shelter services, \$5.2 million on the regional side and \$20.8 million on the provincial side

are the estimated annual social services costs related to family violence that each of us is picking up, whether it's on the provincial tax base or the property tax base. Some 10% of the Niagara regional police budget of \$115 million is spent responding to domestic violence.

On page 7 of your slide deck, you'll see that domestic violence is on the rise in Niagara, unfortunately. Part of that, we think, is due to the economy, and certainly Detective Sergeant Ciszek will be able to answer any questions you have on that. It is estimated that the total cost for society is \$71 million for social services, education, criminal justice, labour and medical, and that's based on a study from 1995.

I think I'll run quickly through the next set of slides, which talks about abuse; I notice that you have other presenters here talking about that. Abuse is about power and control. The abuser slowly takes away the independence of the person that they are abusing, and often that goes into the workplace. That's why family violence is important in the workplace. Family abuse can be physical, sexual, psychological, financial or spiritual. Overwhelmingly, it's women and children that make up the victims of family violence. Sometimes, unfortunately, society blames the victim for that abuse.

The other thing about family violence is that it's learned behaviour. There are studies that show that 75% of children exposed to domestic violence have a tendency to become abusers themselves, and 75% of girls that are exposed to domestic violence have a tendency to become abused themselves. So family violence is not just a women's issue. That's why we say it's everybody's business that we deal with this issue. It's a community health and safety issue, and it's an education issue as well.

The costs are staggering, and that's the next cost that perhaps this committee can concentrate on a little bit—the hidden costs of family violence to employers: lower employee productivity because the employee can't focus on the job at hand or because the abuser is calling her constantly; higher rates of absenteeism for numerous reasons; lower employee morale; higher security and liability risks. These costs are hidden to the employer. So to those that say that to make the changes in this bill would be an added cost to employers, no, the costs are already there; they're just hidden and you don't see them. They're witnessed through the fact that employees aren't making their most productive work possible.

The next slide there, on page 14, talks about why employers should invest in family violence prevention: to improve the health and safety of employees; to protect profits and productivity; to stop crime; to improve the public perception of your organization; and to increase employee satisfaction. The risks are already there, and that's the pitch that we make when we go and John goes to talk to the business sector, or Brian goes and talks to the government sector—that those risks are already there and those costs are there and hidden.

What we suggest to employers in how they can make a difference is that they can learn to recognize, show

respect and offer support. They can develop supportive policies and practices in the workplace. They can keep up to date about family violence and community resources. Don't minimize the situation and ensure confidentiality.

We have some policy considerations here that we give to employers, and those are: develop an employee assistance program; develop anti-harassment policies; discuss family violence issues as part of new employee orientation; offer work-hour flexibility; and establish safety procedures.

Stop Family Violence: It's Everybody's Business goes to employers and works with employees to recognize and respond to family violence in the workplace. We've already done 400 introductions on the topic in Niagara and have 90 employers trained. Part of the reason that we've been so successful recently is because we can point to Bill 168—that it's impending legislation from the government, and it contains a section on domestic violence. We hope that that stays in the bill, and we're very pleased with that.

Before you, you have a tool kit that we would give to an employer that they can use, with sample policies, with information about our services and how an employer can create a positive workplace and can support that through policies, practices and programs.

In closing, the Stop Family Violence: It's Everybody's Business task force supports the domestic violence provisions in Bill 168 because of the costs to individuals, how it shatters lives—and this will help take that away—because of the costs to employers and because of the costs to society, and also because the risks are already there. This deals with the risks directly and it helps employers prepare for those risks.

Thank you very much, Mr. Chair. We'd be open to questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Augustyn. A brisk 40 seconds per side—Ms. Jones.

Ms. Sylvia Jones: How long have you been doing the tool kits for businesses?

Mr. Dave Augustyn: It started with a summit back in 2005, and it morphed into a task force working on this. The tool kit was developed, I think, about three years ago, but it was only through Susan coming on as the project coordinator that we were able to move ahead with things.

Ms. Sylvia Jones: I haven't read it, obviously, but it looks good.

Mr. Dave Augustyn: Yes, of course. It's mirrored on a tool kit that was developed in New Brunswick, and we adapted it for the Niagara region.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones. Ms. DiNovo?

Ms. Cheri DiNovo: We've heard a number of deputations, some from the family of Lori Dupont, for example, who feel this bill does not go far enough, that we need not only physical violence covered, but the escalating aspects of harassment and threats also in the bill. Would you agree with that?

Mr. Dave Augustyn: I haven't seen that. We were talking about that on the way up, actually, about how the bill is there to talk about, if an employer becomes reasonably aware and ought to be aware of this, taking every reasonable precaution within the circumstance for the protection of the worker. I think the answer to your question is, it depends on how it's effective—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. DiNovo. To the government side: Mr. Dhillon.

Mr. Vic Dhillon: Thank you for your presentation. That was quite concise and to the point. My question is, how do you see this bill being an effective tool in addressing violence in the workplace?

Mr. Dave Augustyn: We see it already as an effective tool because it's out there. I wonder if John can comment on that, Mr. Chair, please.

Mr. John Swart: I've experienced this in my own business, where we've had one of our employees as an abused woman, and it just destroys the morale in the business and makes the business very unproductive. And to bring consciousness and some regulation to that through this just gets an employer—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Dhillon. Thanks to you, Mayor Augustyn, Mr. Baty, Mr. Ciszek, Mr. Swart and Ms. Speck for your deputation on behalf of It's Everybody's Business.

Mr. Dave Augustyn: Thank you for the opportunity, Mr. Chair.

ASSOCIATION FOR THE ADVANCEMENT OF SAFETY TECHNOLOGIES

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter to please come forward: Braidy Parker of the Association for the Advancement of Safety Technologies. Welcome, Mr. Parker. As you've seen the protocol, you have 10 minutes, which begin now.

Mr. Braidy Parker: Good afternoon. My name is Braidy Parker. I'm here to represent AASTech: the Association for the Advancement of Safety Technologies. AASTech is a not-for-profit organization that assists Canadian entrepreneurs and organizations to find angel-level funding for their safety-related products in the public and private sector. So you can read into that: That's for first responders, such as fire and ambulance, that's for policing organizations, as well as on a military level, such as body armour and so forth.

AASTech also develops and researches into the area of workplace violence for Canadian organizations. One of the areas we've looked at fairly extensively is the private security area. Private security guards in the province of Ontario are now licensed or required to be licensed under Bill 159, and one of the issues we believe that needs to be seriously looked at under this particular piece of pending legislation is the employer's responsibility to the person that responds to the workplace violence incident, which, as a first responder, would mostly be the private security sector.

Just to touch on what the previous organization spoke to, many of these organizations, from my research, respond to domestic violence issues. They will receive information from somebody in management of one organization where the significant other of the party is going to come and do them harm. Oftentimes, the person called to deal with that particular problem is in fact the security guard.

Bill 168 proposes that, obviously, everybody under this legislation be protected. AASTECH feels that a specific amendment to that act or regulation concerning private security guards should be specifically addressed in it. In other words, what's going to be done to protect the person who turns up to protect you? It's pretty simple, pretty straightforward.

1420

From my research, and I also do a number of training levels in organizations, the response has been fairly minimal to protect that individual. Some organizations will issue body armour; some will not. Others feel it's an expense. I look at it as personal protection equipment. Just off the top of my head, earlier this year, in May, a security guard was stabbed in the head while trying to apprehend somebody stealing baby food. Again in May, a security guard was shot in the chest. The headline read "Saved by Body Armour"; that's personal protection or safety equipment. I think it's time, with the levels of violence that are reaching that particular sector, in which there are 65,000 registered individuals in this province alone who deal with theft on a daily basis, who deal with violence on a daily basis.

I haven't seen much in the way of organizations protecting that class of people. What AASTech would like to see would be an amendment to that, specifically detailing that the employer must do a threat analysis specific to the environment that particular guard works in and specific to that organization and take the necessary steps to protect that worker with personal protection equipment, whatever form that equipment takes.

The second one would be to list security guards as first responders, because in all reality, they are. They're the first person on the scene. They generally make a decision, and the police are called. The police are fantastic at getting there, but we're talking about when seconds count; we're not talking about minutes. These individuals have been stabbed, shot and beaten.

Mostly they are obviously just civilians, so they're not really listed as security guards; they're just people who've been hurt on the job. If you take an in-depth look, they face down people with firearms—not on a daily basis, but enough to make it a consideration. Edged weapons or anything that can cut, wound or lacerate are a significant consideration in this city and in other cities.

Gone are the days when individuals will take a oneon-one approach. We're looking at swarms. We're looking at wolf packs. We're looking at people who will surround an individual guard and physically beat them into the ground. This is a significant problem which I feel and AASTech feels needs to be addressed. The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Parker. Generous time, about two minutes per side, beginning with Ms. DiNovo.

Ms. Cheri DiNovo: We heard a deputation the other day regarding security guards, and I think it's something that we do need to look at in terms of the writing of this bill. One of the things I said to that other deputant is, it sounds like security guards need a union and need to unionize. That was just really an observation, in and of itself

I wanted to ask you, just in your experience, and you're clearly an experienced gentleman in terms of violence in the workplace. We see it, in the New Democratic Party, as an escalating action usually. Usually it starts with harassment, with calls, with bullying, that kind of thing, and escalates to physical violence. Yet there's nothing in this bill that deals with the non-physically violent nature of harassment. We would like to see that strengthened. Would you be in agreement with that?

Mr. Braidy Parker: I would. Certainly, from a security guard perspective, if I might speak on behalf of some of them, certainly not all of them, they're considered a food source. They are the object of ridicule and mockery on a daily basis. That can obviously wear down a person over time. They are called to solve problems but often aren't well trained to be able to solve the problem they've been called to handle.

There's a reasonable expectation from myself, when I am with my family in a public area but on private property, that my security be handled and theirs as well. Yes, there are definitely some people who would escalate that—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. DiNovo. To the government side.

Mr. Vic Dhillon: Thanks very much for your presentation. Do you think that policies and programs can address some of the concerns that you raised regarding the protection of security guards?

Mr. Braidy Parker: To a degree. I believe we need to hold employers more accountable for their actions as well as their inactions, at the end of the day.

Oftentimes, security is the last thing in the budget, it's the first thing that's cut in the budget, and anything associated with it is cut as well. Thus, training programs are cut. We see a number of valid training programs out there in terms of de-escalating problems, but I do not see them finding their way into that 65,000-person base that is required for the training.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Dhillon. To the PC side.

Ms. Sylvia Jones: Just so I'm clear, you're looking at a suggested amendment for 168 that would include security guards or list security guards as first responders?

Mr. Braidy Parker: That's correct.

Ms. Sylvia Jones: Okay, thank you.

The Chair (Mr. Shafiq Qaadri): Mr. Parker, just before you go, the Chair has to ask: Is it New South Wales or Queensland?

Mr. Braidy Parker: You know what? I was waiting for somebody to ask that, and you're in the wrong country.

The Chair (Mr. Shafiq Qaadri): Really?

Mr. Braidy Parker: Yes.

The Chair (Mr. Shafiq Qaadri): South Africa?

Mr. Braidy Parker: No. I'm from New Zealand.

The Chair (Mr. Shafiq Qaadri): Anyway, thanks for your attendance on behalf of the Association for the Advancement of Safety Technologies.

Mr. Braidy Parker: Thank you.

MIGUEL AVILA

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter to come forward, please, and that's Mr. Miguel Avila. Buenas tardes, Señor.

Mr. Miguel Avila: Buenas tardes, Señor.

The Chair (Mr. Shafiq Qaadri): You have 10 minutes in which to make your presentation. I invite you to begin now.

Mr. Miguel Avila: Thank you. Good afternoon, members of the social policy committee. It gives me great pleasure to participate on this day to share my thoughts on Bill 168, which has passed second reading and is currently being debated in this committee today.

I followed the debates and actively participated with my submission to the Minister of Labour, Mr. Peter Fonseca, in his consultation paper on workplace violence prevention of October 2008.

Bill 168 appears not to be responsive, but instead a PR exercise that will increase costs to businesses and achieve little.

I am motivated to come today to share my painful experience of workplace violence. Long before the Lori Dupont case hit the news, in 2003 my wife lost a baby and suffered a miscarriage due to an earlier argument due to an abuse of power carried out by a manager at her workplace.

She did not feel well for the rest of the day and left work because she could not stand the harassment at work any longer and felt depressed. It was not the first time she encountered violence in the workplace. She was three months' pregnant and the incidents were documented with her union of the employer's harassment, the University of Toronto.

That night, she woke up screaming in pain. I had to carry my bleeding wife to the hospital emergency along with my three-year-old child. The university gave my wife time to heal, and because she feared more reprisals and needed a job, she hoped that one day the laws would change and kept silent. As for me, I had a good job with a steady company, but in a sudden change of ownership, my employer sold the building in 2004, and those employees who had less seniority were laid off permanently, including myself.

I applied for school and started working for the Toronto Zoo in 2006. Little did I know, until later, that

this job had a toxic work environment, and I became a victim of workplace violence for the first time in Canada.

I'm a former refugee from Peru, and I know first-hand of violence in the form of torture and killing. I endured six months of probation, in which I was psychologically and verbally abused by a female co-worker who had authority over me, directed by the Toronto Zoo management, in the form of a letter to me. She was a lead hand, grade 4, who had some perceived authority entitlements, like a middle-management position in the collective agreement, as I later found out.

This time my wife and I were expecting our third baby, and I needed so badly to keep this job to support my growing family. Since I could not stand the abuse of this female co-worker any longer, I gathered courage, because I know my case is a very isolated one in terms of complaining against a female.

I followed the internal response system to deal with harassment. My complaint was dismissed by upper management as frivolous and vexatious. I had nine documented incidents; however, in other words, they could not expect a female worker to harass a man. This is the logic in their minds. If a man harasses a woman, the odds would be against me; I would be fired and charged by the police.

I pressed on with the union to have a chance to deal with the matter in a labour board court, but in the middle of the process, management found a way to shut me out. Although my supervisor and I had a good relationship, all of a sudden he turned against me and he found little things to make my job a living hell. The situation was aggravated, since I had no alternative but to file an internal complaint against my supervisor. I had three documented cases of abuse of power, and things got nastier.

1430

From that point on, Toronto Zoo management looked at me as a troublemaker, not as a victim who needed their unconditional assistance as part of the Occupational Health and Safety Act of 1997. Toronto Zoo management once again dismissed my complaint as frivolous and vexatious. I investigated the internal response system and discovered that a senior manager handled the case and reached a decision after interviewing the aggressor.

My health started to deteriorate, and I took a medical leave of absence. Presently, I am disabled, but my spirit to fight to seek the truth has not ended.

In Ontario today, if you want to fight workplace harassment, you must submit a complaint to the Ontario Human Rights Tribunal at great legal expense, especially after the Ontario government abolished the investigations and advocacy wing.

I returned to work, and my employer again had some more secrets under their belt. I got more proactive and outspoken. My case was not dealt with properly by upper management at the Toronto Zoo. I attended courses and workshops on workplace violence sponsored by the union, since the employer-owned training programs were biased and unreliable.

I was suspended from work because I published a newsletter, appendix 1, and in it described how important it was for the employees to be aware of their rights and changes in the law. Finally, I got terminated from work because I sought out the attention of the city of Toronto, as I believed they owned the zoo.

One of my last achievements, made after being terminated, was to compel members of the joint health and safety committee not to agree with zoo management to introduce changes to the internal zoo policy on harassment. I wrote letters to the union and zoo management, saying that a new law should be in place that addresses the real meaning of workplace violence.

I also have copies of health and safety reports for the committee's review and study. Each and every time, zoo management silenced my activities for being proactive and fearless. Please note that I also became a shop steward, and even then, zoo management did not care about my opinions.

It sounds good on paper, but in reality it's not. Based on my personal experience with the Toronto Zoo, I noticed that the greatest enemy is management itself.

How can we improve the above situation? Here are some suggestions that I presented to Mr. Fonseca, Ontario's Minister of Labour, in the consultation paper on workplace violence prevention. First, allow and protect whistle-blowers in the workplace whenever they witness cover-ups by employers that hide and encourage a toxic work environment. Second, allow independent investigators to conduct a neutral and unbiased investigation.

My experience at the Toronto Zoo and the death of my child awoke a fighting spirit within me. In honour of my lost baby, I am here today without fear to speak out on my experience of violence in the workplace. I have no problem speaking out against the Toronto Zoo and the University of Toronto.

I hope that this committee can learn from my experiences and add changes to Bill 168. Please do not be afraid to ask Ms. Andrea Horwath, MPP, for her good points introduced in Bill 29. In the end, you will have a better law to protect Ontarians.

I am not an angry person. I am on a mission to seek the truth and ensure Ontarians are heard and get proper legislation dealing with workplace issues. I will be monitoring the progress of this committee with great interest. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Avila. We'll start with the government side: Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much for your presentation. This bill requires employers to deal with such issues as threats as well, not just physical violence and the higher end of harassment. Considering that things such as threats are covered in the definition of this bill, do you think that it goes a long way in terms of helping address harassment in the workplace?

Mr. Miguel Avila: The answer to that question is very simple, sir. This bill is making baby steps, but we are not in a time to make baby steps. We have to make some mature steps to ensure we don't have to lose any family members at the end.

The Chair (Mr. Shafiq Qaadri): Ms. Jones or Mr. Hillier, as you wish.

Ms. Sylvia Jones: Just a quick question: You say, "If you want to fight workplace harassment, one must submit a complaint to the Ontario Human Rights Tribunal at great legal expense."

Mr. Miguel Avila: If your case is challenged by the employer, you must hire a lawyer or a consultant to help you out. In the case of the city of Toronto, they have the facility—they have the citizens' purse to spend thousands of dollars in money. You know very well that the city of Toronto spends \$1 million on one case. I'll give you an example: When they fought a blind man who wanted to introduce changes to the TTC for calling subway stops, they spent almost \$1 million in legal expenses. This case was reported in the human rights code. Does that answer your question?

Ms. Sylvia Jones: Sort of.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones, Ms. DiNovo.

Ms. Cheri DiNovo: Thank you for the mention of Bill 29 by Andrea Horwath, leader of the NDP. Certainly what I'm doing here is trying to make this bill as strong as that one was. Thank you for your submission. I'm so sorry for your loss, and our prayers are with you.

Mr. Miguel Avila: You're welcome.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. DiNovo, and thanks to you, Mr. Avila, for coming forward with your deputation and written submission.

CATHERINE KEDZIORA

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Ms. Catherine Kedziora. Welcome. I invite you to please begin now.

Ms. Catherine Kedziora: Good afternoon. I'm the daughter of Theresa Vince, and I'm here today to speak to you on my mother's behalf. She was murdered by her boss at the Sears store in Chatham on June 2, 1996. It has been 13 years since her brutal workplace murder, and for 11 of those years I've spent my time working and trying to educate, raise awareness and bring about reform to the province of Ontario. So I need to begin by saying how happy I am that this day has finally come and how vitally important it is that we ensure that this bill be passed as the best bill offering the best possible protection under the law for the workers of this province.

Having said this, as it is written, I do not believe that Bill 168 meets those criteria. Furthermore, as it stands today, it would not have helped keep my mother alive. We all have the right to go to a workplace that is free from bullying, sexual harassment and harassing behaviour of any type, regardless if it is psychological or physical in nature. One of the things that I have learned since my mother's murder at Sears is that her experience is more common among working women than I had imagined. That's why it's imperative that the province's workplace legislation needs to recognize the continuum of violence so that it can effectively address and ulti-

mately prevent it. I am sure that this may sound idealistic and maybe even unrealistic to some of you, but by being a voice for my mother, I hope that I can make it real.

With only 10 minutes, it's impossible for me to impart to you all the things that I have learned over the last 13 years, but I am hopeful, however, that I will be able to open your eyes enough that I can lead your consciences to do the right thing. I'm not alone in this hope because I have come here to be a voice also not just for my mother but for my father, my brother, my sisters and my mother's grandchildren, who all want the same thing: to make sure that my mother, Theresa Vince, did not die in vain.

This is what a continuum of violence looked like in my mother's case. It began with unwanted compliments. Then it went to unwanted attention, moving on to unwanted gifts that she would return. If she did try and return them, things became difficult for her. Then it escalated to staring and leering, to the point where it was unbearable to even get her work done. She couldn't even go to the bathroom. He began calling her incessantly, 20 times or more in an eight-hour day. Then it escalated to calling her into his office that many times in a day. After that wasn't enough, he began calling her at home on her day off incessantly.

She was forced to go to coffee with him. He would make unwanted comments about her appearance and the sound of her breath. After calling her into his office one time, he removed his shirt to show her his tan. Even after all of that, she was still forced to travel alone with him in a car to meetings out of town.

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He made a comment one time that if she were his wife, he would buy her a dishwasher. And because my mother rejected his advances, he began piling on extra work, keeping her late, longer hours.

He was unreasonable. At one time in 24 years of work, he was upset with her, and her raise reflected that. He gave her a penny for her loyalty and for her hard work.

He would be miserable and impossible to please. In fact, coworkers used to tease her about sending her in there so that he would get in a good mood.

He had unreasonable expectations and deadlines and demands of her.

My mother reported her harassment to upper management nearly a year and a half before she was killed. I think that her experience is a true and clear example of why the continuum of violence must be recognized in workplace legislation and why harassment must carry the same degree of importance in the act as physical violence. My mother's workplace was unsafe for her, but she did not have the right to refuse because the risk to her health and safety was intangible. I must say here that the right to refuse in Bill 168 is far too narrow.

For my mother, the dangerous circumstances in her workplace were the sexual harassment and the poisoned environment she faced every day for two years from her boss, and the longer his behaviour was overlooked and left unchecked, the more dangerous it became for my mother to go to work. Without the right to refuse her unsafe working conditions, my mother brilliantly employed numerous strategies to try and protect herself from the risks she faced, but the dangerous circumstances and the danger were not removed for her.

Let me tell you about some of those strategies my mother employed in an effort to reduce the risks to her safety. She enlisted the help of some coworkers to move her desk as far away as she could possibly get her desk from his office door. She enlisted the help of other employees to intercept his phone calls on her behalf. She had some coworkers line up to follow her if he insisted that she go for coffee with him so she would not have to be alone. She would sneak off to have coffee.

Even the lowliest stock boy and the truck drivers who came to the back door with the freight knew of this harassing behaviour, and still nothing was done. The effects of this psychological violence on the safety, health and well-being of my mother robbed her of her esteem, her sense of security, her happiness, her income and her life, and it took her away from her family.

She started losing weight, and for a woman who had always smiled, had a kind word for others and took pride in her appearance, she changed before our eyes. She stopped wearing make-up. She would wear the baggiest and most unattractive outfits, not caring about how she looked. She would complain that she had nothing better in her closet, which we all knew was not the case; she had some very lovely outfits. We never understood why. She became consumed with self-doubt and she looked haggard and defeated. She even questioned her own goodness.

When she no longer could take it, she did what 99% of women do: She decided to leave her job. She got help in order to arrange an early retirement so he couldn't find out until it was all done and there was nothing he could do to stop it. When he did find out, approximately a month before she was to retire, he told her that he would not allow her to leave unless she promised to see him. She refused. Then, on June 2, 1996, my mother's last Sunday to work before she retired, her boss went into the Sears store on his day off with two guns and 100 rounds of ammunition in a Taco Bell bag, and he shot my mother to death.

The violent act of her murder was not where it began; it is where it ended. That is why the definition of "workplace violence" must be broadened to include not only physical but psychological violence as well.

In closing, I would like to add one more thing just to give you some food for thought. Had the province, under the previous government, utilized and acted upon what we learned at my mother's inquest, there is a possibility that Lori Dupont would not have lost her life nine years after my mother, in 2005.

I implore you to get this right. We need this bill, but we need this bill to be the best possible bill it can be so there is never another Theresa Vince or Lori Dupont. We know what we need to do, and there are no excuses anymore. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Kedziora. I think I'd just intervene on behalf of all committee members in thanking you for sharing that very painful and traumatic story, especially in honour of your mother, Ms. Vince. Thank you for your deputation today.

Ms. Catherine Kedziora: You're welcome.

DOMENIC SGUEGLIA

The Chair (Mr. Shafiq Qaadri): I invite now our next presenter to please come forward: Mr. Domenic Sgueglia. Welcome, sir. You've seen the protocol. I'd respectfully invite you to begin now.

Mr. Domenic Sgueglia: Thank you, Mr. Chair. I'd like to thank the committee for this opportunity. I'd like to begin by saying that workplace bullying and harassment destroys individuals and their families.

As already mentioned, my name is Domenic Sgueglia. I was a victim of workplace bullying and harassment for 16 and a half years. My employer was William W. Creighton Youth Services, a secure-custody facility for young offenders in Thunder Bay. Due to the long-term exposure to violence in the workplace, I found I was always concerned for my safety and the safety of others. I was repeatedly directed by my manager to work with the most violent, threatening and out-of-control youth in our care. Whenever I found myself in situations following a verbal and/or physical attack by a youth, my employer refused to support my decision to pursue charges against the youth. My manager advised me that charging youth in custody was strongly discouraged.

In staff meetings, other employees were encouraged and supported by supervisors to share their concerns, whereas I was not allowed to do so because my opinion didn't matter to management.

Following my performance evaluations, the notes taken by my supervisor during our meeting did not accurately reflect the discussions held. When I attempted to address my concerns with my supervisor, I was told that no changes would be made and that my supervision would remain as is. I approached the union on numerous occasions to express my concerns, but my concerns were never addressed.

Following violent and traumatic situations that involved serious injury to staff, no meaningful debriefings ever took place—debriefings facilitated by a trauma team consisting of a psychologist, psychiatrist, social worker and support person—in order to assist the worker in dealing with the aftermath of the trauma.

Creighton Youth Services offered me no support after my house was targeted by an ex-client. Coincidentally, the house next door was broken into a few days later in broad daylight. At this time, I felt as though my entire family was at risk of being harmed, so I was forced to sell my home and move. Creighton offered me no support whatsoever. Soon after, I began disconnecting from my wife, my daughter and extended family members because I was no longer able to manage the stress of the work environment.

A year after I began working at the Creighton centre, I was diagnosed with ulcerative colitis, a stress-related illness. I attempted to access mental health services through both my family doctor and the employee assistance program, but I was placed on a waiting list. I also attempted to file a claim through WSIB for traumatic mental stress, but my claim was denied because I did not meet the criteria.

On June 21, I reached my breaking point. I could no longer fight with the agency and my employer. As a result, I was forced to resign under duress from my 16-and-a-half-year residential worker position.

I quickly went from being a health care provider making \$27 an hour to taking any job and making \$10 an hour. Because presenting to you today is so important to me, I paid \$500 to be here and travelled over 12 hours.

As a result of the long-term exposure to violence and bullying in the workplace, I continue to struggle in terms of a loss of self, loss of dignity, loss of respect and loss of financial security.

In closing, I believe this bill will provide a voice and become a valuable resource to those victims of workplace violence and harassment. This bill will also provide the added hope employees need to be able to advocate for themselves in providing a fair and respectful process. Thank you.

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The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Sgueglia. You have about two minutes per side, beginning with Ms. DiNovo.

Ms. Cheri DiNovo: Thank you, sir, for coming. Again, my condolences for all that you've gone through.

You know that corrections workers are exempt or not covered by this bill. You're aware of that, right?

Mr. Domenic Squeglia: I understand that.

Ms. Cheri DiNovo: So I'm not sure that it would have helped you the way it's currently written. That's number one.

Did you want to respond to that?

Mr. Domenic Sgueglia: Just to make mention that I was not a corrections worker. I was part of child and family services.

Ms. Cheri DiNovo: Okay, so you were not part of corrections. But I wanted to make that clear.

Part of the issue here—in a sense it's another issue. I'm bringing forth a private member's bill—I've already announced that I'm tabling it—to cover post-traumatic stress disorder for front-line workers, which would have covered you in terms of your dealings with the WSIB. It's kind of a tricky area right now.

But again, I'll ask you what I've asked the other deputants, which is—obviously, violence is the end of the road here; it's not the beginning of the road. Bullying, harassment and that kind of behaviour, if that were in the bill itself, would it help strengthen the bill, in your sense, rather than just "violence"?

Mr. Domenic Squeglia: Yes, rather than just physical violence, including psychological violence, which has already been mentioned.

Ms. Cheri DiNovo: Okay, wonderful. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. DiNovo. The government side?

Mr. Vic Dhillon: Thank you very much. I'm very sorry to hear about all that you've been through. Thank you for your courage in creating more awareness of this issue.

I just wanted to clarify. Ms. DiNovo stated that correctional officers were not covered, and I've just been informed that they are covered under OHSA and this bill. I just wanted to clarify that.

With respect to your presentation, other forms of harassment such as bullying, not just physical violence, will be included in the definition of this bill. Do you feel that will help to address the harassment-in-the-workplace issue?

Mr. Domenic Sgueglia: Yes, sir, I would. Mr. Vic Dhillon: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: Thank you very much for being here. I'd like to just get some brief comments from you. You were working in an environment that was violent and threatening to begin with. That's the nature of the job.

Mr. Domenic Sgueglia: Yes, sir.

Mr. Randy Hillier: I'm just wondering how you can square knowing that factor, knowing that you are dealing with those people, and society has put a demand that those people are dealt with in some fashion. Your difficulties and your troubles were not with management; they were with the residents, I guess.

Mr. Domenic Squeglia: No, sir, that's incorrect.

Mr. Randy Hillier: Oh.

Mr. Domenic Sgueglia: My difficulties were with management—

Mr. Randy Hillier: With management.

Mr. Domenic Sgueglia: Yes—where management offered me no support as far as doing my job.

Mr. Randy Hillier: But was the violence and the harassment from management or from the residents?

Mr. Domenic Sgueglia: I experienced violence by witnessing traumatic incidents, being involved in traumatic incidents with residents, but the harassment and bullying came directly from my employer.

Mr. Randy Hillier: From the employer. Okay. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier, and thanks to you, Mr. Sgueglia, for coming forward for your deputation.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Chair (Mr. Shafiq Qaadri): I invite now our next presenters to please come forward: president Thomas of OPSEU, the Ontario Public Service Employees Union, and colleagues. Welcome, Mr. Thomas, to you and your colleagues. I invite you to please have them introduced as well, and I invite you to begin now.

Mr. Warren Thomas: Thank you. With me today I'm honoured to have Lisa McCaskell, who is a health and safety officer expert with OPSEU, and Lynn Orzel. Lynn is on our executive board. She represents the executive board on health and safety matters and has taught health and safety for years.

You have our presentation. I'm just going to whiz through it real quick, because I've heard a lot, in the previous submissions, of what we're going to say.

Again, thank you for the opportunity to present. I'd like to start by saying that we commend the Ministry of Labour and the government for taking this important step to amend the Occupational Health and Safety Act to clarify that workplace violence and harassment are hazards that must be addressed by employers and other workplace parties. We recognize that, and we think that's a very good thing you're doing.

However, even though Bill 168 goes a long way toward clarifying the roles of workplace parties and will guide them as they assess risk and develop programs to reduce the risk of violence that affects all workplace parties—it's our view that the overall direction of the amendment is positive and will lead to safer workplaces. However, we'd like to draw your attention to a few specific areas which we believe should be improved and clarified.

Most importantly, we believe the definition of "work-place violence," as set out in Bill 168, should be amended to include threats which give a worker reasonable cause to believe that she or he is at risk. It should also be clarified that the use of physical force endangering a worker may initially be directed at a non-worker. For example, in long-term-care facilities and institutions, the violence could be resident-to-resident, and workers are placed at risk by having to intervene. I have had lots of personal experience with that in my former life.

Although Bill 168 does address the employers' duties to address threats of violence, we find it confusing and problematic that the threats are not captured in the definition. We believe that they should be captured in the definition.

The other area that we believe should be amended is in the employer consultation with the joint health and safety committee and/or health and safety representative, when preparing policies to address workplace violence and harassment, when developing a program to implement the policy with respect to workplace violence. We think there's some danger in the act here that that might get lost, and we recommend that it be firmed up.

I'll just close by saying that we would like to commend the government for introducing this much-needed amendment to the Occupational Health and Safety Act. As you know, our members in every sector face problems with violence and/or harassment and have been asking for our assistance. We know that the hazards of work-place violence and harassment will not simply disappear because the law has been changed, but we believe that the change will assist employers, workers, unions and the Ministry of Labour itself to work more effectively for violence- and harassment-free workplaces.

I'll just close my remarks by saying that our labour inspectors are members, and they could certainly use these changes and use their working life to have the tools in their toolbox to address threats and intimidation. I'd just like to say that the personal testimony we heard before us is in the extreme. However, it's not uncommon. The threats and all that kind of thing: If you change this legislation, I think someone needs to be charged with the task of training employers, and I mean training employers on what inappropriate behaviour is, what stalking is, what harassment is and what bullying is. We represent 130,000 workers and we spend a lot of time representing workers in situations like this. It is extremely, extremely hard on the person who's being harassed or stalked and it's almost always a female who's experiencing it. It tears workplaces apart and it ruins families. I had a case a few years back where a pillar of a community was a manager. Literally, it should have been an inquest but it wasn't, and it was directly tied to three suicides. Three women who worked for him committed suicide. So it's long overdue. We commend you for taking it on. But in our submission here we made some suggestions for changes that come from front-line workers, from our experts who do the work, that we think you'd find beneficial if you were to include them. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Thomas. About 90 seconds per side, beginning with the government.

Mrs. Carol Mitchell: Thank you very much for your presentation. I just want to clarify: You have two points that you would like added or changed, amended, in the proposed legislation. I just want to give you the opportunity to do that and expand a bit on the training of the employers because I think that's linked to the second point.

Mr. Warren Thomas: I'm a big believer in educating labour and management together, the same way. I pursue that all of the time. But when it comes to this kind of stuff, people really don't know how to handle it, because you're taking on authority. Someone who's in a subordinate position is reaching out for help and, really, it's been my experience that a lot of people don't want to get involved because they're afraid to, because then they become the target of that affection or the bullying and stuff.

If you could train the stewards and managers the same way on the changes to the act, what the definitions are and what's appropriate and not appropriate, then the minute someone files a complaint, there should be an immediate investigation and there should be no reprisals for exercising your right to feel safe at work as well as be safe.

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Mrs. Carol Mitchell: And that's part of mandatory consultation. That's what you're talking about as well?

Mr. Warren Thomas: Yes. Union and management should work—

Mrs. Carol Mitchell: And the other is the definition of workplace violence—you want to see an expansion of that. You want to see a definition—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Mitchell. To Mr. Hillier.

Mr. Randy Hillier: I want to get your comments on the privacy part of this act and if it causes you any concern. I'm sure you're aware that employers or supervisors or managers who know of personal conditions or ought to reasonably know about these conditions must share them also with people who may be affected in the workplace if there are domestic disputes or any personal problems that that employee is facing. Does that cause you any concern? How do you see that playing out in the workplace?

Ms. Lisa McCaskell: I could take that. You're talking about the duty to warn of a hazard, basically. We've looked at it quite carefully and have talked with our labour colleagues from across the labour movement about this, and we don't anticipate it as a problem. It's on a need-to-know basis. So it's not that we—

The Chair (Mr. Shafiq Qaadri): Sorry, I need you to identify yourself.

Ms. Lisa McCaskell: Lisa McCaskell, health and safety officer from OPSEU.

It's on a need-to-know basis. So if there's a hazard, just like any other hazard in the workplace, the employer has a duty to warn. So if they become aware of the possibility of—let's say it's domestic violence, which I think you're talking about—

Mr. Randy Hillier: What about the part, though, where if somebody knows or ought to have reasonably known that there was something in the personal life of an employee, does that cause you any—

Ms. Lisa McCaskell: No, it doesn't. "Ought to reasonably have known" should mean that the employee has reported it to their employer, that they're afraid that their spouse or ex-spouse is stalking them, or that other people in the workplace perhaps have reported it. But it's not a case—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Ms. DiNovo.

Ms. Cheri DiNovo: Thank you, Mr. Thomas. In the NDP, we plan on putting forward those amendments, certainly both of the ones that you've asked for.

A further question that I've asked all the deputants: We don't think the bill is strong enough as it's currently written, because physical violence is the end of a story, as you heard earlier, not the beginning. So we'd like to see it extended to harassment and psychological violence, in other words. Would you be in agreement with that?

Mr. Warren Thomas: Couldn't agree more, Cheri. Ms. Cheri DiNovo: Thank you.

The Chair (Mr. Shafiq Qaadri): Thanks, Mr. Thomas, to you and your colleagues for your deputation on behalf of the Ontario Public Service Employees Union, OPSEU.

As my colleagues can see, there is a vote in Parliament. If it is a 30-minute, then we'll actually continue with our presentations. So we are awaiting information.

Interjection.

The Chair (Mr. Shafiq Qaadri): All right, so we do have 28 minutes. I'll probably adjourn about 20 minutes or so from now.

WENDY HO

The Chair (Mr. Shafiq Qaadri): I would invite our next presenters to please come forward, if they're present: Ms. Sanson, counsel for Sanson Law Office. Are you present, Ms. Sanson? If not, is Ms. Ho present, Wendy Ho? Thank you, Ms. Ho. I will invite you to please come forward. You're 10 minutes earlier than stated, perhaps even more. I'd invite you to please begin now.

Ms. Wendy Ho: Good afternoon, Chair and committee members and also the participants. My name is Wendy Ho. I was a registered nurse, and I'm representing myself to give some information with recommendations regarding Bill 168, the Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace) 2009.

In regard to Bill 168, the clauses do not consist of effective legislation to provide access for investigation on a justice basis. It formulates an arbitrary process to settle the needs of the workers of this province. As there is no access to evidence for the victims' representatives, the governing authority can deliberately end up with a denied decision for complaints, as preferred.

I've read the debate record from MPP Andrea Horwath, where she has said, "We are anticipating the potential for violence, for harassment, for bullying; so that we are not waiting until workers have to deal with these incidents where their very lives are put at risk because we did not foresee circumstances brewing in the workplace that will likely end up creating a situation where someone is going to be hurt, either physically or mentally." Then she added: "What they could get it in is in Bill 29, legislation that I brought forward several months ago—in fact, well over a year ago. That includes strong powers of investigation for designated Ministry of Labour staff. It exercises the precautionary principle to the fullest. It covers all workers, but not only workers; any other person within the workplace is covered in Bill 29...."

Also, I read a letter from the chief commissioner of the Ontario Human Rights Commission, Ms. Barbara Hall. She wrote:

"And while the bill would require employers to assess the risk of workplace violence, there is, however, no similar provision for assessing risk for harassment.

"In our experience, violence is often the culmination of ongoing acts of harassment. Moreover, harassment and violence are not necessarily always physical; they can also take the form of psychological/emotional harm. Risk assessment, prevention and protection effects should account for these interrelated dimensions of harassment and violence. The ministry may wish to consider broadening the bill in this regard."

Coming from me, I had the experience that when complaints go to the related governing boards, the board

misleads the public on providing information, which stops the filing of applications of complaint. Namely, the Ontario Labour Relations Board publicized no statutory time limit for filing a section 74 application. However, applications filed over 13 months from a reported incident have been denied for delay.

Also, commissioners had no jurisdiction on public service categories due to the provincial government's border control, and then handled submissions with a denial of a decision, without investigation, or pushed the duty among authorities. Namely, in early 2000, the Ontario Ombudsman was appointed by the provincial government, but he has no jurisdiction on health care and the post-secondary education system. The Health Professions Appeal and Review Board pushed the duty around between them and the Ontario Human Rights Commission. Premier Dalton McGuinty did not look into the problems reported since 2003.

Harassment in the workplace persists due to no effective legislation to protect employees. A poisoned environment endangers employees' survival and thus discourages employees from carrying out necessary services to the public. The recurrence of the problem results in subsequent serious damage to Ontarians.

In here, I recommend that in regard to Bill 18, the Health Care Accountability and Patients Bill of Rights Act, 1999, schedule 2, it states that "every resident of Ontario" has "the right to receive all necessary health care services in a health care system" which "recognizes that every provider of health care services is a valued member of a multidisciplinary health care team." In order to ensure Ontario residents have such a right, we need an amended act to comply with the law. The protection of care providers from harassment while providing necessary health care services for Ontario residents is mandatory. Thus, when the affected health care providers' or the workers' representative or inspector needs to access Ontario residents' records for evidence which directly relates to the services that the worker has provided, it would not be violating the privacy act, provided the inspector or victims' representative ensures that no identifying information about the individual is disclosed as a result of the investigation activities. These are carried out within the Health Professions Appeal and Review Board, but not through any other authorities or any victims' representatives yet.

Finally, I conclude that the provincial government needs to make an effective amendment act, as in Bill 29, to enable employees to be responsible to the public. Simultaneously, the amendment act can repair the infringement of employees' rights to fundamental justice.

Thank you for the opportunity to present.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Ho. About a minute or so per side, with Ms. DiNovo begin-

Ms. Cheri DiNovo: Thank you very much, Ms. Ho. Thank you for your deputation. I couldn't agree more with some of the points you made. I'm just asking deputants if you agree with the extension of this bill from actual physical violence to psychological violence and harassment, because we in the NDP feel that that will give it more strength and make it a closer approximation to Andrea Horwath's Bill 29 than it is now.

Ms. Wendy Ho: The most important thing in Bill 29 is that it also mentioned the investigation process. That will be very important because if no evidence is presented, then nobody can determine whether the complaint can be denied.

Ms. Cheri DiNovo: Absolutely; I couldn't agree more with that as well. Thank you very much.

The Chair (Mr. Shafiq Qaadri): To the government side: Mr. Dhillon.

Mr. Vic Dhillon: Thank you, Ms. Ho, for your presentation.

Interjection.

The Chair (Mr. Shafiq Qaadri): Ms. Ho, you still have the floor.

Mr. Vic Dhillon: Thank you so much for your presentation. With the changes in this bill to cover threats and bullying as forms of harassment, do you think that would address some of the concerns you have?

Ms. Wendy Ho: Yes, absolutely. If this kind of harassment exists in the workplace and the workers just work for their pay and they become deaf and blindwhatever they see and whatever they hear, they just ignore it because they don't want to be intimidated afterwards—that will directly affect public safety. They will have litigation following, but the point is, the public won't get justice because the insurance company and the hospital, the employer, will-

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Dhillon. To the PC side: Ms. Jones.

Ms. Sylvia Jones: Thank you for your presentation.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Ho, for your deputation and presence today.

First of all, I'd just go back and ask: Is Ms. Sanson of Sanson Law Office present? If not, we'll move forward if our next presenters are here.

HUMAN RESOURCES PROFESSIONALS ASSOCIATION

The Chair (Mr. Shafiq Qaadri): Mr. Allinson and Claude Balthazard of the Human Resources Professionals Association: Gentlemen, welcome. We'll break after this presentation for the vote. I invite you to come forward. Please introduce yourselves. Please begin.

Mr. Scott Allinson: Good afternoon. My name is Scott Allinson. I am the director of government and external relations for the Human Resources Professionals Association. I'm joined today by my colleague to the right, Claude Balthazard, who is the director of HR excellence and the registrar. We are pleased to have this opportunity to come before the Standing Committee on Social Policy to speak on behalf of our members on Bill 168.

HRPA's mission is to be a global leader in advancing the human resources profession as the essential driver of business strategy and organizational success. The association has over 18,000 members representing approximately 7,500 organizations in every industrial sector, employing more than two million Ontario workers.

For more than 70 years, the association has guided the evolution of the human resources profession in Ontario. Through the Human Resources Professionals Act of 1990, HRPA was granted responsibility for the regulation of the professional practice of members and certification of their competence as HR practitioners through the certified human resources professional designation.

Our members contribute to the organization's mission, vision, goals and strategies. They specialize in organizational effectiveness, staffing, employee and labour relations, total compensation, organizational learning, training and development and, of course, occupational health, safety and wellness.

Overall, our members support in principle the government's policy to prevent violence in the workplace. Recently, we surveyed our members regarding the proposed legislation and received very comprehensive responses from about 1,500 members representing 20 employment sectors in the province.

What we saw was that 75% of those who responded supported the legislation, which would require all employers to develop and implement a violence prevention program, and 81% stated that their organization already has a violence and harassment policy in the workplace.

However, the survey revealed through their comments—120 pages' worth—that they have serious reservations about certain areas of the proposed legislation, specifically privacy concerns for employees who have had a history of violent behaviour and the government's expectations from employers regarding prevention of domestic violence in the workplace.

The comments we received from our members indicate that they have serious reservations about privacy issues and circumstances that would require employers to disclose personal information on employees who have had a history of violent behaviour. The key message here is to make sure that the proposed legislation achieves the proper balance for employers and protection of employees.

For example, one member stated in the survey: "The workplace and the employer cannot and should not be made to 'police' everything about their employees. It is incumbent that employers take reasonable and responsible actions and have similar policies in place to ... ensure the safety of its employees, but an employer cannot become psychiatrist, marital counsellor, policeman/woman, judge and jury for everyone that they employ."

The provision in the proposed act regarding personal information about a worker with a violent history has to be handled very carefully. One would not want to see an employee who committed an offence 20 years ago and never exhibited the behaviour again be labelled as violent.

However, some of our members stress that if employers must take responsibility and reasonable action to prevent violence in the workplace, employers should not be penalized when it results in termination. Termination should be one of the allowable consequences if employees perform violent acts.

The association is very concerned with the possible consequences in the workplace of a requirement to advise others of an employee with a history of violent behaviour. Again, there needs to be balance between operating a business and having appropriate standards in place to protect employees.

In regard to the section that the legislation requires employers to take reasonable precautions to protect an employee from domestic violence in the workplace, 69% of respondents supported the statement, but again expressed major concerns about the government's expectations of employers. The majority of respondents' comments clearly stated that they do not believe that employers are, or could ever be, appropriately equipped to comply with the government's expectation to deal with domestic violence in the workplace.

Here is a sample of respondents' comments regarding this section in the proposed legislation: "For an employer to take all reasonable precautions to protect an employee from domestic violence in the workplace doesn't seem practical."

This places an increased onus on the employer to be involved in an employee's personal life and makes employers reliant on an employee to communicate such information. Employees are very reluctant to share information to that degree. How can an employer be held responsible in these circumstances?

Another member echoed this statement: "I think it will be difficult to enforce domestic violence precautions in the workplace when many would either deny or hide domestic violence at home. I do agree that if a situation has been brought to management's attention then it is their responsibility to ensure the safety of the individual and all employees in case domestic violence comes into the workplace."

Again, our members overall support the section regarding the prevention of domestic violence in the workplace, but clear language in the proposed act and consistent communication with employers from the Ministry of Labour must be provided to ensure that employers can reasonably guarantee that workers in these situations can be protected without jeopardizing the productivity of the whole workplace.

In conclusion, I'd like to reiterate that HRPA and its members support the intention of Bill 168; however, we feel the government needs to review these sections in the proposed legislation to find a proper balance that will ensure that HR professionals can meet their commitment to a fair, equitable and productive workplace for employers and workers.

Thank you for the opportunity to address you today. We would be pleased to answer any questions you may have.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Allinson. We have about a minute per side, beginning with the government: Mr. Dhillon.

Just to inform my colleagues, we have 12 minutes to the vote.

Mr. Vic Dhillon: Thank you very much for your presentation. With respect to your concern about what's expected of employers in addressing workplace violence, do you think that could be clarified if guidance materials etc. were provided?

Mr. Scott Allinson: Absolutely. What we found in the survey was that they're looking for direction from the ministry in regard to steps to be taken, language, what have you. So, basically, promotional material—

Mr. Vic Dhillon: And you have been in contact with

ministry staff?

Mr. Scott Allinson: We have brought that to their attention, yes.

The Chair (Mr. Shafiq Qaadri): To the PC side: Mr. Hillier.

Mr. Randy Hillier: I just have a few comments on two subjects. It's unfortunate that the Liberal government only allowed us 10 minutes for each delegation because there's really room for thoughtful discussion.

The first is about flexible or mobile workplaces: How

do you see this legislation affecting that?

The other component is, I think it's important to not build a trap for our employers with this good intent. In the termination aspect, if you do have somebody who has a known history, if there's termination just on that cause, then you're subject to human rights actions or other actions.

So, those two components: flexible workplaces and how you deal with it; and some more thoughts on the termination side.

Mr. Scott Allinson: I'll defer that to my colleague, Claude Balthazard, to answer.

Mr. Claude Balthazard: There are many different ways a workplace can be flexible. I think that flexibility is not so much the issue as—

Mr. Randy Hillier: I mean location, not time—drivers, construction sites, different places.

Mr. Claude Balthazard: Right, and also workers who work from home and all sorts of things. I guess it's within the clarification of the responsibilities of the employer—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier, Ms. DiNovo.

Ms. Cheri DiNovo: We heard some profoundly moving testimony today from the daughter of Theresa Vince, who was murdered. We heard some profoundly moving testimony from Lori Dupont's family as well. In both instances, pretty typical violence in the workplace, where domestic hits workplace: harassment, bullying, phone calls, escalating psychological violence resulting in physical violence at the end, and death in those particular instances.

I guess my question to you is: This seems to be a pretty generalized pattern. What would the concern of

your members be, then, about this bill in terms of responding to that pattern? Presumably, it's pretty direct. Any manager who sees this happening should be acting, should they not, in that instance to curtail this or to act in some way, shape or form to keep their employees safe?

Mr. Claude Balthazard: The issue is not so much about the extremes or the black-and-whites; it's the greys. The idea is to be clear, to minimize the grey zones. But, yes, sometimes it's very clear.

Ms. Cheri DiNovo: One of the suggestions by OPSEU—Mr. Thomas—was that more educational work be done by the government for employers and that—

The Chair (Mr. Shafiq Qaadri): I'll need to intervene there, Ms. DiNovo.

Ms. Cheri DiNovo: Certainly we would support—

The Chair (Mr. Shafiq Qaadri): I'd like to thank you, Mr. Allinson and Mr. Balthazard, for your deputation.

The committee is recessed pending that vote and outcome, and if the government does not fall.

The committee recessed from 1518 to 1545.

SUSAN HOUSTON EVA GUTA

The Chair (Mr. Shafiq Qaadri): Colleagues, we reconvene after this series of votes, and I believe we are now going to invite Ms. Houston and Ms. Guta to please come forward. You've seen the protocol. There may be further votes, depending upon how the day evolves, but I invite you to please begin now.

Ms. Susan Houston: Thank you. Committee, I'd like to draw your attention to section 32.0.4 of the act, in particular that if an employer is aware or ought to be aware that domestic violence that is likely to expose a worker to physical injury may occur in the workplace, the employer must take every reasonable precaution to protect the worker.

My name is Susan Houston and I'm from General Motors of Canada. My job is as a national coordinator for employment equity for the Canadian Auto Workers, and one of my key assignments, as well as human rights, is to assist any equity-seeking groups. In this particular case and with regard to this bill, I will be advocating for women workers as well as lesbian, gay, bisexual and transgender workers.

One of the things I'd like to say is that this is very doable. We've been doing it since 1993 in workplaces. Additionally, one of my other roles that I do is training workplace women's advocates. These advocates hold a specialized role in the workplace. They are trained to create a supportive work environment, effective intervention with women experiencing intimate violence. They're trained on steps to follow when helping an abused woman, what not to say to an employee, and questions not to ask a woman. Currently, we have 140 women's advocates in workplaces, in manufacturing, health care. My co-presenter Eva Guta's position is as one of those

140 women's advocates in the workplace whose role is to assist women who are in intimately violent relationships.

The point that we'd like to hone in on in this bill is the addition of the language around domestic violence. First of all, we'd like to say "well done" on this addition, on this particular language. As an equity coordinator, I would like to bring to your attention the terminology of "domestic violence" as being a bit archaic. The term that's used largely today is "intimate-partner violence." If you were to go on the website of Shelternet, for example, which is the Canadian website for shelters, you wouldn't find the terms "domestic violence" or "spousal abuse" anymore. It would be preferable to have the bill read, "If an employer is aware of intimate-partner violence, then they should take every reasonable precaution for the safety of the worker."

In Canada, we have same-sex marriage, and violence happens in all sorts of relationships. The term "domestic" brings to mind the home or the domicile and heterosexual couples, and this is not always the case.

Eva?

Ms. Eva Guta: As a workplace women's advocate who deals with violence, it is important to know that the negotiation of this position could not have come soon enough. This process is in place so that employees can get confidential support where personal choices, autonomy and decisions are respected. We have successfully created this space by speaking out, putting up posters and negotiating contract language to assist women. At Lear Whitby, where I work, the language was negotiated for the first time in 2002, and I've been a women's advocate and a harassment investigator since 2005.

This is not at my workplace, but unfortunately we are aware of cases where women have been fired for showing up at work with a black eye, with the employer stating that they didn't meet the key deliverables. With this law, it would be good to ensure that no retaliation is taken against those who report abuse or raise safety concerns. Intimate-partner abuse spills over into our work lives and workplaces. To be in a violent intimate relationship can be horrendous. To have assistance at work, sometimes the only place you are allowed to go, can be of tremendous help. If someone chooses to disclose abuse or intimate-partner violence, the response of the employer or union should be one of support and assistance on how to address safety considerations.

On another note, as a women's advocate I have seen violence manifest itself even in dating. Picture two coworkers just beginning a relationship. At its early stage, violence can take different disguises. Let's just say that one partner decides to end the intimate relationship; the other is not very happy with the decision and chooses to slash the other one's tires or that kind of behaviour. Since they don't live together, this is not what everyone would see as domestic violence, but it would be clear if it was to be called "intimate-partner violence."

In closing, I would like to thank the committee for allowing us to speak. This bill is a really good step toward addressing violence in the workplace.

I would recommend also, just like Sue said, adding the equality component to it by replacing the term "domestic violence" and naming the issue "intimate-partner violence."

Do you have any questions?

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Houston and Ms. Guta. To the PC side: about 90 seconds or so. Ms. Jones.

Ms. Sylvia Jones: Thanks for your presentation.

A quick question. To just reconfirm, your concern with the proposed legislation, as it stands, is the definition? That's the change you're proposing to the committee, to change it from "domestic partner" to—

Ms. Eva Guta: Intimate partner.

Ms. Sylvia Jones: "Intimate-partner violence"?

Ms. Susan Houston: Intimate partner, yes.

Ms. Sylvia Jones: Okay. Thank you.

The Chair (Mr. Shafiq Qaadri): Ms. DiNovo. 1550

Ms. Cheri DiNovo: We in the NDP would like to see the bill strengthened considerably, beyond just a definitional change. It doesn't include physical or psychological harassment or bullying—both the Vince and Dupont families have called for that—and also that the definition of "worker" be changed to "person," because often it's not the worker, but it can be client-to-client violence that the worker gets caught up in.

Would you be in support of those changes as well?

Ms. Susan Houston: Yes.

Ms. Cheri DiNovo: Thank you.

The Chair (Mr. Shafiq Qaadri): To the government side.

Mr. Vic Dhillon: Thank you very much for your presentation.

Do you feel that additional language in the bill to cover domestic violence in the workplace would have a positive impact on your members?

Ms. Susan Houston: Absolutely.

Mr. Vic Dhillon: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Guta and Ms. Houston, for your deputation.

LISA BARROW

The Chair (Mr. Shafiq Qaadri): I would now invite Dr. Lisa Barrow to please come forward. Welcome. I invite you to please begin now.

Dr. Lisa Barrow: Good afternoon. My name is Dr. Lisa Barrow. I am a healthy-workplace consultant and owner of LMSB Consulting in Port Colborne, Ontario. LMSB Consulting specializes in creating healthier and more respectful workplace communities through training and policy development and implementation. Workplace bullying and leadership research are the two areas that I am involved in. I'm the author of In Darkness Light Dawns: Exposing Workplace Bullying, and the book Hope for a Healthy Workplace.

I am here today in support of the passage of Bill 168, which would protect employees from the terror of workplace violence and harassment. I am here to speak

for those who cannot speak for themselves, to ensure justice for all employees. I am here to speak for those who cannot speak for themselves because they have been paralyzed by fear stemming from workplace violence and harassment. Such individuals may not have the courage to speak up for themselves, and so I am here to speak on their behalf.

The employment relationship is a relationship that should be built on trust and respect rather than intimidation and disrespect. It is a psychological contract between employers and employees in which each agrees to uphold the value of each other. However, this contract has been breached by some individuals who have chosen to bully others in the workplace.

Employees did not agree to give up their rights to be treated with dignity and respect. They did not agree to become targets of individuals bent on devaluing and destroying them. They did not agree to have their dignity stripped and their voices silenced. Yet many employees in Ontario find themselves in this situation and are

feeling helpless and hopeless.

Workplace bullying is repetitive abusive behaviour that devalues and harms other people on the job. The intent of bullying is to intimidate and torment, stripping a person of his or her dignity and self-esteem. Workplace bullying doesn't involve physical violence, but relies instead on the formidable weapons of hostile actions and words. However, if left unaddressed, workplace bullying can lead to workplace violence.

1600

Workplace bullying is epidemic in all market sectors. Wherever people come together to earn a living, workplace bullying exists and is slowly robbing employees of their dignity, well-being and, in some instances, their lives. Clearly, workplace bullying has flown under the radar for too long. We must wake up to it as the true menace it represents to our collective health, wellness and prosperity.

The targeted employee experiences what a prisoner of war experiences when being water-tortured. At first, the drops of water falling upon the prisoner's forehead may appear to be innocuous. The prisoner may initially believe that he can tolerate the act. However, the longer the prisoner is subjected to this repetitive and abusive act, he begins to emotionally, physically and mentally break

down.

A bullied employee, just as the prisoner, eventually breaks down and is no longer able to perform the tasks assigned to him. He will typically experience severe emotional trauma, along with diverse physical symptoms caused by stress. The targeted person becomes less and less able to concentrate on tasks, hampering his performance at work. Eventually his earning power is reduced and his ability to make a living jeopardized.

No two experiences of workplace bullying are the same. According to researchers Rayner and Hoel, there

are five categories of workplace bullying:

The first category is the threat to professional status; for example, being publicly humiliated by a boss or colleague.

The second category is threat to personal standing, which includes teasing or intimidating a person.

The third category is isolation, which is preventing access to opportunities, or isolating the person physically or socially.

The fourth category is overwork, which includes imposing undue pressure to produce work, and setting impossible deadlines.

And finally, destabilization, which is failing to give credit where it is due, assigning meaningless tasks, or setting up the employee for failure.

I direct your attention to the handout, which reflects the findings of my research related to these bullying

categories.

Of the 355 Canadian and American employees surveyed, 47% were publicly humiliated, and if we apply the statistic to Ontario employees, that would be approximately three million employees in Ontario; 42% were teased, and applying it to Ontario employees, it will be approximately 2.7 million; 18% were intimidated by either bosses or colleagues, which would be approximately 1.1 million employees in Ontario; and 33% were ostracized, which would be approximately 2.1 million Ontario employees.

It is important to look at how workplace bullying affects targeted employees. Referring to the handout again, 32% of the people in my survey had experienced physical ailments, and using this statistic and applying it to Ontario employees would equate to two million employees; 28% experienced depression, and if you apply this to Ontario employees, it would be 1.8 million employees; 29% experienced anxiety, and if you apply this to Ontario employees, it would be 1.8 million employees; and 22% felt helpless, and if you apply this to Ontario employees, 1.4 million employees in Ontario would experience this.

Targeted employees responded to the bullying in several ways: 10% of the respondents were involved in harmful activities such as recreational drugs, smoking and alcohol—if you apply this to Ontario employees, it would be approximately 652,510 employees; 12% avoided work, and if you apply this to Ontario employees, it would be 783,012 employees; and 24% tolerated the bullying because they were afraid of losing their jobs, and applying this to Ontario employees, it would be approximately 1.5 million employees.

Finally, the most devastating statistic: 7% of the people who responded to the survey had considered suicide or workplace violence. If you apply this percentage to employees in Ontario, we would come up with a

number of 456,757 employees.

As you can see by these statistics, workplace bullying is rampant in our workplaces and can no longer be ignored. These seemingly harmless acts are taking a toll on employees and putting a strain on society. My research confirms that bullying damages employees' health and wellness in a powerful way. In recent months I have been contacted by individuals who were considering suicide because they could no longer endure the bullying they

were experiencing. A mother called me and said that she was going to commit suicide after she exhausted her savings, because she was being bullied in the workplace. A 31-year-old mother did indeed commit suicide because she could no longer face her bully in the workplace.

Ladies and gentlemen, you may not receive the phone calls and e-mails from distraught employees and grieving family members, but I do. I feel their pain. I see their hopelessness. I see them crying out for help, for a solution to this problem. You have the solution. You have the power to bring hope to millions of employees who are silently suffering in Ontario. Ladies and gentlemen, no life should be harmed or lost as a result of the antics of a psychological harasser or bully.

Bill 168 would literally save lives, as targeted employees would have an avenue to take to protect themselves from workplace bullies. It is imperative that Bill 168 be passed. I implore you to pass Bill 168 so that mothers, fathers, grandparents, siblings, aunts, uncles and children do not have to mourn the loss of a loved one who has taken his or her life because he or she could no longer endure the feeling of helplessness, pain and stress associated with psychological harassment. Let employees in Ontario know that their voices have been heard by you. Let employees in the rest of Canada and the world know that you are willing to lead the way for creating healthier, respectful and bully-free workplaces. Let those who have lost loved ones or who have been harmed by workplace violence and bullying know that you care and that you are willing to do something to stop the pain.

Thank you on behalf of employees in Ontario.

The Chair (Mr. Shafiq Qaadri): Dr. Barrow, I'd like to thank you on behalf of all the members of the committee for your presentation and the materials that you have submitted today.

ELEMENTARY TEACHERS' FEDERATION OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I would now respectfully like to invite our next presenters to please come forward: Ms. Watkins and Ms. Thede of the Elementary Teachers' Federation of Ontario and colleagues. Please do introduce yourselves, particularly if you're speaking, as we need to attribute the remarks correctly. I invite you to please take your places. Please begin.

Ms. Hilda Watkins: Good afternoon. My name is Hilda Watkins. I'm vice-president with the Elementary Teachers' Federation of Ontario. With me today is executive assistant Susan Thede, who works in our protective services department. I'm pleased to have the opportunity today to speak to Bill 168 on behalf of the 73,000 teachers and education support personnel employed in the public elementary schools across Ontario.

The policy changes proposed by Bill 168 are long overdue. I have a personal connection to the primary genesis of this bill: the unfortunate murder of Lori Dupont. I am from Windsor and I can tell you that the Dupont story shook our community. I was president of

our local at that time. Not long after the Dupont murder, one of our young teachers was forced to contact the police to intervene in a situation of serious harassment by a parent. She had to contact the police herself because her principal failed to take the situation seriously. Had Bill 168 been in effect, there would have been school board protocols for what to do to protect that teacher.

ETFO is concerned about all aspects of violence in the workplace. Workplace violence includes physical violence aimed at teachers and educational professionals by students, some of whom have been identified of having special needs or behavioural issues. We have been seeing a disturbing increase in weapon-based violence and a significant rise in bullying of all types, including cyberbullying, in elementary schools. At ETFO, we receive regular reports of physical harm to our members. This violence can range from bruising and broken noses to being menaced with weapons. Frequently teachers and educational professionals are also threatened with violence by students or other members of the education community, including parents.

1610

The definition of "workplace harassment" in Bill 168 is very broad, broader than "harassment" as defined in the Human Rights Code. It is not grounds-based, so workplace harassment under Bill 168 may include conduct that is related to a prohibited ground of discrimination. This definition would likely capture bullying and cyber-bullying. Accordingly, ETFO supports this broad definition.

The definition of "workplace violence" only deals with actual or attempted physical force that causes or could cause physical injury. It does not include the threat of physical force and does not sufficiently anticipate the potential for violence. This is a significant issue for our members in terms of students who threaten or in terms of students our members know have the potential to be violent. The definition also limits workplace violence to acts that cause or could cause physical injury. This may preclude acts of violence that could cause psychological injury such as post-traumatic stress disorder, anxiety, depression and other conditions that arguably are not captured by the term "physical injury."

The example we would use is that of the grade 4 teacher who is threatened by a student with a gun. The gun may turn out not to be real, but the teacher's psychological distress may be acute. Her resulting psychological state should be recognized as an injury, but under the legislation currently as written, it likely would not be.

The definition of "workplace violence" addresses physical force against a worker per se and does not address violence in the workplace experienced generally. Accordingly, student-on-student violence and physical force against students or other persons on school property would not fall under the definition of "worker." Student violence or threat of student violence, for example, may escalate or spill over to teachers and educational workers directly and put them at risk of injury and harm, and student violence or threats may be a precursor to subsequent violence directed at teachers.

I refer you to our proposed amendments to the definitions that are outlined, beginning at the bottom of page 4 of our brief. ETFO supports the provisions of Bill 168 that require employers to prepare workplace violence policies, provide training and review their effectiveness annually. The workplace harassment program must also include procedures for reporting and investigating incidents of workplace harassment.

The threat of physical force is contemplated in the clause relating to implementation programs. ETFO sup-

ports these proposals.

In the education sector, many legislative efforts have imposed obligations on school boards to draft and implement policy and to train workers on these policies. Various policy and program memoranda from the Ministry of Education require policy implementation on student-based violence in schools by local school boards. Unfortunately, these obligations have not been met in a sufficient or consistent way.

This bill is deficient with respect to workers' participation in the development of the policies, timelines for completion and resources for development and training. I refer you to five recommendations at the bottom of

page 6 that we're making to address these issues.

ETFO supports the bill's provisions that require employers to conduct risk assessments for workplace violence and to advise workplace health and safety committees on their findings. Bill 168 requires employers to take every precaution reasonable in the circumstances to protect workers from domestic violence that would likely cause physical injury to the workers in the workplace. The bill, however, fails to define domestic violence. ETFO is concerned that the lack of definition reinforces the false dichotomy between work and home and between public and private life. Also, the language of the bill only addresses physical injury, not such conduct as harassment, stalking and psychological and emotional abuse. These are real. They cause real injury and in fact may be precursors to physical violence. The bill should be drafted so as to protect workers from this harm to the extent possible.

I refer you to two recommendations on the top of page 8 of our brief that suggest amendments to address these concerns. Subsection 32.0.5(3) of Bill 168 requires employers and supervisors to provide information, including personal information, to a worker about a person with "a history of violent behaviour" in two circumstances: (a) if the worker could be expected to encounter that person in the course of his/her work, and (b) if there is a risk of workplace violence likely to expose the worker to

physical injury.

ETFO has sought this policy change for many years. It is the federation's interpretation that this section will obligate school boards to document incidents of violent student behaviour on the Ontario student record through violent incident reports or other similar procedures. Bill 168, however, does not specify how to determine whether a person has reached the threshold of having "a history of violent behaviour."

ETFO makes the following recommendations: that what constitutes a history of violent behaviour be clarified and that regulations, specifically for the education sector, be developed to align with the Education Act on the question of documentation on student files.

Bill 168 obligates employers to notify the union, the joint health and safety committee and the Ministry of Labour when a person is disabled from performing work or—

The Chair (Mr. Shafiq Qaadri): You have 30 seconds left, Ms. Watkins.

Ms. Hilda Watkins: —requires medical attention because of the act of workplace violence. Harassment causes a teacher or educational worker to require medical attention: This should also be part of the notice provision.

In conclusion, we believe that with minor amendments, Bill 168 will bring Ontario in line with other jurisdictions that have introduced progressive measures—

The Chair (Mr. Shafiq Qaadri): I'll need to intervene there, with apologies to you, Ms. Watkins, and Ms. Thede. Thank you, on behalf of the committee, for your deputation on behalf of the Elementary Teachers' Federation of Ontario.

MARY NAIDU

The Chair (Mr. Shafiq Qaadri): I invite now Dr. Mary Naidu, psychiatrist, and her colleague Mr. Bohdan Sirant. Welcome. I invite you to please begin now.

Dr. Mary Naidu: My name is Dr. Mary Naidu. My presentation is entitled "Workplace Harassment, Violence, and Psychopathy in Ontario Public Hospitals: What the Province of Ontario Should Do About It." A brief resumé of my qualifications is included in appendix A on page 27 of my submission.

I am a psychiatrist with 30 years of experience, most of it treating people who are severely mentally ill. As you may appreciate, the severely mentally ill are amongst the most vulnerable members of society and often victims of bullying. They also suffer when workplace harassment leads to degraded health care for them.

I have for many years personally experienced and witnessed workplace harassment by physicians of other physicians at a major Ontario psychiatric hospital. I have, as a former representative of the Association of Ontario Physicians and Dentists in Public Service, defended physicians who were being harassed by a physician in chief and his accomplices. I know of many cases, which I have learned about from other physicians and mental health professionals, of harassment at various Ontario public hospitals. I have also, in my private practice, treated patients who have suffered mental and physical illnesses such as post-traumatic stress disorder, PTSD, resulting from harassment at work.

I also study psychopathy, which is strongly associated with, and in many cases is at the root of, instrumental aggression; violence, including murder; criminal recidivism; spousal abuse; and white-collar crime.

1620

Workplace harassment in Ontario's hospitals is a systemic problem and certainly results in millions of dollars of lost productivity and lower quality of care. Unfortunately, this blight is grossly underreported and does not get the attention from the province that it deserves. Worst of all, some of these bullies are protected by the hospitals at the expense of the Ontario taxpayer.

The victims of workplace harassment often have to fight for their rights alone and bear the huge emotional

and financial costs of doing so.

Workplace bullying is a marker for psychopathy. The traits most associated with psychopaths are listed in appendix B on page 28. To highlight, these include lack of empathy; callousness; lack of remorse or guilt; and a grandiose sense of self-worth—traits often seen in bullies.

Psychopathy is strongly associated with criminal versatility. This should include corporate crimes such as fraud. Thus, if the province ignores harassment, it may also be ignoring a telltale sign of corruption, of white-collar crime such as fraud, in Ontario's hospital system. This kind of white-collar crime by psychopaths has been described in Snakes in Suits, a book by Dr. Paul Babiak and Dr. Robert Hare. I'm providing each member of the committee with a copy for their libraries.

Workplace harassment, which is sometimes trivialized by terms such as incivility, disrespect and ill-treatment, includes many concepts such as bullying, camouflaged aggression, disruptive physician behaviour, mobbing, rankism and scapegoating, all of which are defined on

pages 3 through 6 of my submission.

Workplace harassment, if unchecked, often escalates to violence, including murder, as in the tragic case of Lori Dupont. I have read the heart-wrenching testimony of Barb Dupont, Lori Dupont's mother, and it saddens me greatly that so many instances of harassment were ignored by the Ontario hospital system.

Harassment may easily escalate or be stepped up to workplace violence. It may be instigated by the bully or orchestrated by mobbers. Harassment may also trigger reactive aggression and violence against the harassers and bullies. This may be a factor in the recent Fort Hood incident, in which an American army psychiatrist murdered fellow soldiers.

Any hospital that has a higher degree of workplace harassment is more likely to have a higher degree of corruption and white-collar crime and more likely to have violence. Unfortunately, harassment has been tolerated in the medical culture, not only in Ontario but abroad, and I discuss the roots of this phenomenon on pages 7 through 9.

Unfortunately, harassment in the medical profession is underreported for various reasons, which I have listed on pages 8 and 9, including the belief that nothing would be

done about it and fear of reprisals.

I have witnessed harassment of many doctors at a hospital where I worked for many years. This harassment resulted in numerous resignations and a high turnover of physician staff; lost productivity; disruptions to continuity of care; reductions in quality of care; legal settlements; and danger. One can only imagine how many millions of dollars were wasted at that hospital.

I would like to give you a recent example. A hospital clerk reported to me that a physician bullied her because she would not schedule and book his private practice patients during scheduled hospital hours, for which he was already being paid to treat hospital patients. This physician may have also been given free paid time off at another hospital to do this sessional work.

She claimed she was bullied because she refused to participate in that physician's attempt to defraud the hospital. In her opinion, the physician's bullying was a reprisal against her for having behaved with integrity. The physician lobbied senior management to have her fired.

This kind of fraud is referred to by physicians who know about it as double- or triple-dipping. OHIP may not address it in their auditing.

This case points out the fact that those professionals who harass are also predisposed to other anti-social acts. Unfortunately, many cases of harassment remain a secret because certain Ontario hospitals are paying the victims to be quiet by means of silence-for-money clauses in their termination contracts or legal settlements. The toxicity of workplace bullying is more pervasive than some people realize, and this has been recognized by certain institutions, such as the US joint commission, which has put out advisories against harassment. I've discussed this on pages 12 to 15 in my submission.

I now come to the topic of psychopathy in the workplace. Dr. Robert Hare, professor emeritus of the University of British Columbia and the foremost psychopathy researcher in the world, provides a definition. I'm not going to read the whole definition. Just to highlight: "Psychopathy is a personality disorder that includes a cluster of interpersonal, affective, antisocial and lifestyle traits." There's "a range of unethical and anti-social behaviours, not necessarily criminal. Among the most devastating features of criminal psychopathy are a callous disregard for the rights of others and high risk for a variety of predatory and aggressive behaviours."

These psychopaths are enabled to succeed in today's large corporations and institutions, especially where regulation and oversight are weak. I discuss the issue of psychopaths and the risks they pose in the Ontario health

system on pages 15 to 18.

It's worth pointing out that many Canadian researchers, such as Dr. Robert Hare, and institutions, like the Mental Health Centre Penetanguishene, have provided an incredible amount of research that has been internationally recognized and has contributed to the current knowledge about psychopathy. Their research can be applied to Ontario's hospitals to make them safer and higher-integrity institutions.

Ontario hospitals also need to use a benchmark for best hiring. I refer to the world-renowned Mayo Clinic. The Mayo Clinic places great emphasis not only on hiring but also screening out persons whose values are incompatible with their core values, which include mutual respect and integrity and a high standard of personal and professional conduct. They have careful screening processes for their candidates because if wrong persons such as psychopaths are hired, then they can do a lot of irreversible and costly damage before they are discovered and removed.

The Chair (Mr. Shafiq Qaadri): You have about 30 seconds left, Dr. Naidu.

Dr. Mary Naidu: I discuss the Mayo Clinic model for controlling harassment on pages 18 to 21.

My nine recommendations are given on pages 22 to 23. I think that victims should be provided some support. They face hurdles. PTSD carries a stigma, especially for physicians. It's difficult to prove and attribute to harassment. The current process is perceived as involving a lot of runaround for the victims—

The Chair (Mr. Shafiq Qaadri): With respect, Dr. Naidu, I will need to intervene there. I would, first of all, congratulate you for your deputation, for the hardcover book and the very thorough presentation. Thank you, as well, on behalf of the committee. We continue to hope that the good people of Etobicoke and environs are served well by you.

COMMUNICATIONS ENERGY AND PAPERWORKERS UNION OF CANADA

The Chair (Mr. Shafiq Qaadri): I would now like to invite our next presenter to please come forward if they are present: Ms. Dolan, of Communications Energy and Paperworkers Union of Canada, and colleague. You are here, so we are pleased. We invite you to please come forward. As you've seen the protocol, I'd like you to please begin now.

Ms. Barb Dolan: Thank you. My name is Barb Dolan, administrative vice-president for the Communications Energy and Paperworkers Union of Canada. I'm joined today by Keith McMillan, national representative responsible for health and safety with CEP.

The Communications Energy and Paperworkers Union of Canada was formed in 1992 by a merger of three major unions in Canada. CEP represents 150,000 workers across Canada, with approximately 50,000 women and men in over 500 bargaining units in Ontario. Violence in the workplace is of vital importance to us, and we welcome this opportunity to make our comments.

CEP members are exposed each and every day to various forms of workplace violence. These incidents range from verbal assault or isolation to physical harm, including death. CEP membership works with the public, with clients and, of course, with co-workers. CEP membership works alone and often in odd hours and remote locations. Our membership often deals with employers who have little care for the violent aspects of their workplaces. Workers do not have control over the workplace design and are often discriminated against, especially in the case of women workers.

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Statistics Canada reports that from 2001 to 2005, 69 homicides occurred as a result of victims' legal employment while on the job. As noted in the Ministry of Labour's Consultation Paper on Workplace Violence Prevention, 2008, more than 356,000 incidents of workplace violence were reported in 2004 alone, including sexual assault, robbery and physical assault. Of these, nearly 75,000 injuries were documented. Many sensible recommendations were made at the Theresa Vince and Lori Dupont inquests. These recommendations, most yet to be implemented, speak to the scope and depth of the problem.

We will address our issues with the bill, as proposed, and close our comments with CEP's position on the legislation and regulation of violence in the workplace.

Mr. Keith McMillan: On the definitions of violence and harassment in the workplace: Harassment is violent behaviour; however, in this bill we find separate definitions for "violence" and "harassment." CEP believes that physical and psychological violence, i.e. harassment in the workplace, are both occupational hazards of a violent nature and should be clearly defined as such in legislation under one singular definition. The definition for "violence" as proposed excludes a wide range of aggressive workplace behaviour such as all forms of harassment, verbal assault, bullying and intimidation. By definition in this bill, harassment is simply "vexatious" and not considered to be violence upon a person simply because it's not physical. You will note that in every recent case of physical violence causing death in the workplace in this province, a pattern of harassing behaviour was the precursor to the final acts that led to the deaths of these workers. Harassing behaviour can lead to physical harm and should be treated as such.

By providing a separate definition for "harassment," a separate remedy is called upon from employers, a remedy which carries lesser precautions than the remedy for physical forms of violence. To be explicit, for forms of violence such as harassment, the employer does not need to perform a hazard assessment nor identify measures and procedures that arise from that assessment. Since the only language in the bill that empowers joint health and safety committees' right to know is around assessments, joint committees have no involvement whatever in the proposed harassment policy and program. This is a major omission in terms of consultation with affected parties. In fact, the lack of joint committee involvement throughout this bill will be discussed later.

In the view of CEP, the definition of "violence" which should be used in this bill should be much closer to that used in the European jurisdiction: "Incidents where persons are abused, threatened or assaulted, in circumstances occurring at or related to their work, involving an explicit or implicit challenge to their safety, well-being or health."

To turn to the issue of joint health and safety committee involvement, while the bill requires that joint committees and representatives be advised of the results of initial assessments and subsequent reassessments, this isn't good enough. Joint committees should be consulted

in a meaningful fashion throughout the process of assessing the workplace, from the planning to the results stages. Similar to provisions that entitle joint committees to be present at the beginning of testing, representatives may be able to ensure that the assessment covers the proper ground, is not superficial and is effective for the employer and workers alike.

As the bill is presently written, the joint committee is merely advised of the results, presumably, at that point, to empower the committee to comment and make

recommendations to the employer.

The problem is that at that point, consultation is after the fact, and the joint committee is often ignored by the employer. Once the assessment has taken place, the employer is always reluctant to go back to correct errors, especially errors in the scope of the assessment, which could result in costly rework. This causes unnecessary fights between the joint committee and the employer, unnecessary strain for the Ministry of Labour inspectorate, and often there remains a strained relationship between the joint committee and the employer. This is all on top of the obvious risk of using a flawed assessment for the policy and program to prevent violence.

In terms of domestic violence in the workplace, we are very pleased to support provisions which require employers to deal with potential domestic violence. However, on the issue of work refusals, we are pleased to support the provisions that are put forth in situations which may involve violence. We are also supportive of the language to seek safe havens in a place that may not necessarily be

the workplace.

However, CEP feels that there is a need to be explicit in the act that a refusal to work that involves violence extends for the entire period of the time that the worker must refuse in order to protect themselves, and that the employer covers the entire refusal period. There is also a need to be explicit that WSIB legislation covers lost wages and benefits tied to any periods when the worker is unable to attend work as a result of an incident of workplace violence or harassment.

Moving to sector-specific requirements: As outlined in our introduction, CEP represents workers in virtually every sector of the Canadian economy. This being the case, we know that there are many specific requirements that should be in place in terms of violence for many sectors. We see that there are too few dealt with in the act itself. These requirements should be captured firmly in regulation. For instance, the public service sector should enjoy administrative protections such as never having to work alone. Workers who work at night should never have to access or egress from a workplace that is dark or without appropriate security. Workers should never be without a reaction procedure specific to the nature of their work that may be implemented when violence becomes an imminent hazard. We are of the hope that regulations will capture these particular shortcomings in the act.

Ms. Barb Dolan: CEP's position on legislation and regulation of violence in the workplace is that the workplace violence coverage should:

—cover all forms of violence in a comprehensive definition, including verbal, harassment, sexism, racism, rankism, bullying and psychological and physical incidents of violence:

—specific recognition in the Occupational Health and Safety Act that violence, both physical and psycho-

logical, is an occupational hazard;

—reprisal protection should be strengthened. We can have the best regulation in the world, but unless it stops employers from intimidating workers into not reporting incidents of violence, we will not have protected Ontario workers;

—include the precautionary principle in the act and regulation as espoused by Justice Archie Campbell; and

—include recommendations from the Theresa Vince and Lori Dupont inquests.

Any specific workplace regulation should set out:

—specific mention of meaningful consultation and participation with health and safety representatives;

—that employers must conduct hazard assessments in full participative consultation with health and safety representatives and committees to identify whether

workplace violence is a potential hazard;

—that information must be provided to workers about potential for violence and incidents of violence. Information on new clients or client history is not a violation of privacy legislation, nor is providing information on incidents. Information does need to be communicated in a manner that is respectful—

The Chair (Mr. Shafiq Qaadri): You have a minute left, Ms. Dolan.

Ms. Barb Dolan: Thank you. Further through our document, you'll see further recommendations that CEP is proposing. We thank you for the opportunity to present today and would look forward to any questions that you might have.

The Chair (Mr. Shafiq Qaadri): There are 20 seconds. Ms. DiNovo?

Ms. Cheri DiNovo: Thank you very much. We in the NDP agree with your recommendations and will be putting forward amendments to this bill.

The Chair (Mr. Shafiq Qaadri): To the government side: Ms. Mitchell.

Mrs. Carol Mitchell: Thank you very much for your presentation. We certainly will read the end of your presentation. We understand that it is difficult to—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Mitchell. Mr. Hillier?

Mr. Randy Hillier: Yes, quickly: My question is, which European jurisdiction are you referring to on page 2, and if there's a specific statute that—

Mr. Keith McMillan: I couldn't quote the statute, but it's my understanding that it's out of the European Union.

Mr. Randy Hillier: The European Union.

Mr. Keith McMillan: Yes.

Mr. Randy Hillier: Thank you.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Dolan and Mr. McMillan, for your deputation on behalf

of the Communications, Energy and Paperworkers Union of Canada.

ONTARIO PUBLIC TRANSIT ASSOCIATION CANADIAN URBAN TRANSIT ASSOCIATION

The Chair (Mr. Shafiq Qaadri): We now move to our next presenters: Mr. Cheesman and Mr. Leck of the Ontario Public Transit Association. Welcome, gentlemen, and I would invite you to please begin now.

Mr. Norman Cheesman: All right; thank you very much, Mr. Chair. I know we want to move quickly today. On my right is Brian Leck, the general counsel for the Toronto Transit Commission, representing OPTA. Our brief today is also a joint brief with our federal counterpart, the Canadian Urban Transit Association. We represent providers of urban transit, both conventional and specialized transit, as well as the suppliers of those services.

Just by way of background, we were involved with this legislation prior to its introduction in the spring, in discussion with officials at the Ministry of Labour. We've been following this very closely, and we're very pleased to be here today to have an opportunity to present to you.

The transit industry, as Brian is going to explain in his remarks, is a unique industry. It has mobile and static work environments, which have some interesting implications. We address in our letter—and I understand that the brief was made available to staff. I don't know whether you have copies here or not.

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We're going to talk about the right to refuse work, the issue of the provision of personal information, and then, finally, the issue around domestic or intimate partner violence, however you choose to define that.

Brian?

Mr. Brian Leck: You really do need to be a fast-talking lawyer here.

What I'd like to touch on are three points, very quickly, that affect public transit. As Norm has said, public transit is unique. It's not a factory; it's not an office setting; it's not a building. But it's not just a vehicle and moving workplace, so to speak; it's a moving workplace that has absolutely open access to all members of the public, and it has carriage and responsibility for their safety. That brings with it certain implications.

One of the points that bothers us in this legislation is the work refusal provision. What it allows, in effect, is an absolute carte blanche, a subjective right on the part of a worker, to simply refuse to work because they believe, or they have reason to believe, in their own mind, allegedly, that there is some safety issue, an issue that involves their safety. That could, in a labour strife situation, in a situation where someone either wanted to misuse or wanted to abuse the situation, treat someone looking at him in an unusual way as a threat to their safety. Under this bill, the

way it's drafted, that would be an adequate basis to refuse work.

Our request is that you take a look at that and essentially replace it with a reasonable-person test. Implement a test that at least requires that there be reasonable and probable grounds of imminent danger to the worker. That way, there is some objectivity brought to bear on a situation that is otherwise really a very subjective situation. It's behaviour. It's not a machine breaking down. It's not a device that's at issue. It's behaviour, it's credibility, and it involves issues where people's lives and their safety is at issue.

One of the concerns we have is, for example, late at night, if a worker refuses to work, that vehicle is disabled; it's parked. It could be a streetcar. It's going to be blocking traffic and it's going to be leaving people, potentially late at night, without access to another vehicle for some time.

There are already, in our view, sufficient means and resources to address those types of problems, via the police, supervisors, special constables and other resources that exist in our society. It is simply not an issue, in the context of public transit, that needs to be addressed in the current legislative format.

I would also point out that in other provinces—Alberta, British Columbia, PEI, Nova Scotia—there is a general requirement for a reasonable-person test for any refusal to work, be it equipment or other types of refusals. So at the very least, we would request that you review that provision.

Likewise, with respect to domestic violence, we have a number of concerns. One of those in particular is, what does that mean? Does it mean boyfriend, girlfriend, extended family?

The word "person" is used in the legislation. Are we supposed to, as an employer, somehow monitor what is going on between spouses—employee and non-employee spouses—and then somehow deny access to public vehicles? What role is the employer to take in the case where there is rumour and gossip of domestic violence? Is there an obligation to investigate, to get the details, to get at the truth, whatever that is?

The big danger with all of this is that in hindsight, everyone is going to be very nervous. In hindsight, something looks very different than it does when there are rumours circulating around an office environment or amongst employees.

So it's very unclear what domestic violence covers, what the obligations of the employer are to investigate, and what the employer is to do, in the context of public transit and our operators, when it has wind that there might be some domestic violence between a boyfriend and girlfriend who are living together. What are we to do to exercise reasonable precaution?

Finally, the point I'd like to touch on deals with the whole issue of personal information and how we handle that, again, in the context of public transit. This deals with persons, so if the TTC is aware that certain people in the public sector, for example, have a history of some

assaults, what steps are reasonable to take, if that person lives in Scarborough or North York and uses public transit, to protect the operator? To take the legislation, the bill, literally and to apply it, what are we to do? Post pictures? Call in all the operators on a daily basis and have a briefing? Those are implications that, frankly, I don't think have been thought through fully.

Likewise, there are issues, again, in the workplace. If you have a situation where there is someone who's had some issues of violence, what is the obligation to investigate that? Is it a domestic situation? Is it a situation where there is a disturbance, a fight in a bar with some friends? What effect does that have in terms of communicating that to employees in the workplace and the rumours and the gossip that may start from that communication? So it's not just the communication that's necessary within Bill 168 but what the effect on morale is. What is the effect on the employee who is at risk here because of all of the almost harassing behaviour that this legislation could be generating as a result of not placing proper parameters on some of these points? Those are just some things to consider and think about.

Public transit, in the end, is different. It is fundamentally different than other types of workplaces, and it needs to be treated differently. If it isn't, then there are going to be unforeseen consequences that could actually jeopardize the safety and welfare of both our employees and the public.

The Chair (Mr. Shafiq Qaadri): Thank you, gentlemen. About 40 seconds per side—Mr. Dhillon.

Mr. Vic Dhillon: Thank you for your presentation. Do you think that your concerns with work refusal can be addressed through guidance or other support type of material?

Mr. Brian Leck: I think that would be helpful. We would request that the legislation be amended to create a reasonable-person test. That at least brings some objectivity to the situation so it's not open to abuse, so it's not open to improper use, which, again, has a much greater effect than it would, for example, in a factory situation.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: Thank you very much for your presentation today. It's clear to me that this legislation was drafted with the perspective that everybody works in a static, clerical, white-collar job. There hasn't been a lot of thought given to any other employment outside of that and the difficulties and the creation of problems in other workplaces. I want to thank you for your presentation. You have some other views, and it's very good to hear those other thoughts.

The Chair (Mr. Shafiq Qaadri): Ms. DiNovo.

Ms. Cheri DiNovo: I can't help but think that "reasonable" has never been defined by women, particularly when they complain about things like phone calls, buying coffee, gifts. These are all the incidents that led up to Theresa Vince's death and Lori Dupont—incidents that would never have been defined by men as reasonable grounds on which to refuse to work. The

reality is that it's all of these little things that lead up to the violent act at the end. I can't help but think that TTC operators, particularly women alone in a car, when their domestic abuse partner or intimate partner who is targeting them sits next to them and rides with them, wouldn't be of huge concern for your organization. I would welcome an exemption—

The Chair (Mr. Shafiq Qaadri): With respect, Ms. DiNovo, I'll need to intervene there. I thank Mr. Cheesman and Mr. Leck for your presentation on behalf of the Ontario Public Transit Association.

WINDSOR OCCUPATIONAL HEALTH INFORMATION SERVICE

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Ms. Hamilton of the Windsor Occupational Health Information Service, and any colleagues you may have. Welcome, Ms. Hamilton. I invite you to please begin now.

Ms. Joy Hamilton: Good afternoon. I'm Joy Hamilton. I've worked in a unique occupational health and safety library and information referral service for 14 years, providing information to Windsor-Essex county residents who contact my place of work.

Most people think of violence as physical assault or murder. Workplace violence, though, has a much broader scope. The International Labour Organization defines workplace violence as "any action, incident or behaviour that departs from reasonable conduct in which a person is assaulted, threatened, harmed, injured in the course of, or as a direct result of, his or her work."

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In recent years, new evidence has emerged on the harm caused by non-physical violence, often referred to as psychological violence. Psychological violence includes bullying, mobbing, verbal insults, sexual or racial harassment and intimidation. Bullying is usually seen as acts of verbal comment that could mentally hurt or isolate a person in the workplace. Bullying usually involves repeated incidents or a pattern of behaviour that is intended to offend, degrade or humiliate a particular person or group of people. This includes engaging in gossip, spreading false information, deliberately impeding a person's work or tampering with a person's personal belongings or work equipment. Bullying has also been described as the assertion of power through aggression.

Statistics released by Ontario's Workplace Safety and Insurance Board show lost time claims for assault, violent acts and harassment have increased by 40% from 1996 to 2005. We believe that number has increased again from 2005 to the present. We know the number of inquiries that we have been receiving regarding workplace violence is increasing: At least on a weekly basis, we receive requests for information about workplace violence.

While I was writing this statement, we received two inquiries regarding violence in the workplace, one from an employer eager to find information to assist in training

the workers regarding violence in the workplace. The other inquiry came from a frustrated worker who read the article in our local newspaper about last Tuesday's hearings regarding Bill 168. She felt compelled to call and report that she had been a victim of violence in the workplace in the past. She reported that a rape attempt at her workplace had left her afraid to return. After struggling for an answer, she decided she must quit her job. She had hopes for a different future at her new workplace but was subjected to psychological harassment in the form of swearing, threats and intimidation. What was she to do, quit another job? She decided to educate herself and now counsels women suffering from the devastating effects of workplace violence.

Last night at a restaurant, I observed the owner swearing at three wait staff. The owner used abusive language in a raised voice. The restaurant was very busy and parents were trying to quickly usher their four young children out the door, trying to shield them from the

owner's disturbing behaviour.

The Workers Health and Safety Centre says, "All workers are at risk from workplace violence but workers who work with the public are at greater risk of physical assault. Women face increased risk of violence while on the job, primarily because the workforce in high-risk occupations such as retail, social service or health care is predominantly female. Workers, of either sex, in any occupation are equally at risk of being victimized by

psychological violence."

WOHIS questions the exemption from posting written policies at a workplace of five or less employees. From the teenaged worker in the video store to the worker in the factory; from the nurse in the hospital to the MPPs in the room, we all need protection from violence in the workplace, but we need to remember that the focus should be on prevention first and foremost. Recognizing violence as a health and safety issue is the first step, but legislation on the books is only part of the answer. As with other health and safety hazards such as noise or asbestos, enforcement of this new legislation will be fundamental to ensure that workers' health and safety is protected. Violence in the workplace is a health and safety hazard that must be prevented and eliminated because violence in any form is not part of the job.

Thank you for this opportunity.

The Chair (Mr. Shafiq Qaadri): Thank you very much. We'll begin with the PC Party: about 90 seconds per side.

Ms. Sylvia Jones: Thank you for your presentation. I don't have any additional questions.

Ms. Joy Hamilton: Thank you.

The Chair (Mr. Shafiq Qaadri): Ms. DiNovo.

Ms. Cheri DiNovo: I couldn't agree more. Thank you

for your presentation.

Just as I've asked the other deputants: We're looking to introduce an amendment that would extend the definition of violence to include bullying and psychological violence as well. Would you be in favour of that?

Ms. Joy Hamilton: Definitely.

Ms. Cheri DiNovo: Thank you.

The Chair (Mr. Shafiq Qaadri): To the government side. Mr. Dhillon?

Mr. Vic Dhillon: Thank you for your presentation.

Ms. Joy Hamilton: You're welcome.

Mr. Vic Dhillon: The current definition is meant to cover violence in terms of higher-end violent behaviour. With this bill, the definition is intended to cover bullying and most types of harassment. Do you feel that this would answer some of your concerns?

Ms. Joy Hamilton: I think it will answer some concerns. I hope it can be made stronger.

Mr. Vic Dhillon: Thank you.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Ms. Hamilton, for your deputation and presence on behalf of the Windsor Occupational Health Information Service.

INOUEST ACTION GROUP

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter to please come forward: Ms. Smedick of the Inquest Action Group. Welcome, and I'd invite you to please begin now.

Ms. Lois Smedick: Good afternoon. My name is Lois Smedick and today I'm representing the Inquest Action Group of Windsor, Ontario. The Inquest Action Group was formed to monitor and address compliance with the recommendations of the inquest into the death of Lori Dupont at Hôtel-Dieu Grace Hospital in Windsor, Ontario, on November 12, 2005, four years ago. The Inquest Action Group has met regularly for that purpose between January 2006 and the present, November 2009.

Since the release of Bill 168, the Inquest Action Group has studied the text of the bill; consulted with persons who have specialized expertise in sexual violence and violence in the workplace, especially violence against women; and listened to the debate in the Ontario Legislature concerning the bill.

Workplace harassment and workplace violence endanger the health and safety of workers as surely as unsafe equipment does and as surely as other workplace hazards do. Further, endangerment of the psychological health or safety of a worker can have consequences as lethal as immediate endangerment of the physical body can. Psychological harassment—making a coworker miserable or afraid—can be an end in itself or it can be a precursor of other kinds of assaults, some of them murderous, on a worker.

It should be self-evident that a woman who is stalked in her place of employment, a man who is taunted beyond endurance in his workplace, or any worker who is threatened by word or deed to the point where the worker has reasonable cause to believe that physical injury is likely to occur—such persons, such workers, are enduring real harm that can escalate to the point of dangerous risk to themselves and to others.

Workers are entitled to a safe workplace, a place that legislation endeavours to make as secure as reasonably possible against danger, whether the danger resides in some "equipment, machine, device or thing," to quote the Occupational Health and Safety Act, or the danger is posed by a human being. Psychological as well as physical violence is a real threat to health and safety, and must be legislated against as such.

The Inquest Action Group has faithfully monitored compliance with the recommendations made by the jury in the inquest into Lori Dupont's murder in her workplace four years ago. We are a group of women of different backgrounds, occupations and stages of life, but we have found one voice in this cause.

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Bill 168 must incorporate clauses that recognize fully and bring public authority and conscience to bear upon the problem of endangerment to psychological health and safety as well as physical and health and safety of a worker.

We, the concerned public, can help prevent workplace harassment. We can help prevent workplace violence. We can help prevent endangerment of the physical and psychological health and safety of workers. We can help prevent threatening statements and behaviour that give workers reasonable cause to believe that they are at risk of physical injury.

With the help of workers, risk can be assessed, worker safety can be protected, and we can do more than simply say to a grieving mother or father, sister or brother, daughter or son, "Never again."

Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Smedick. We'll begin with NDP and Ms. DiNovo. About 90 seconds per side.

Ms. Cheri DiNovo: Thank you so much for this, and thank you for being one of those unreasonable women who don't put up with what they're dished out and continue to fight for the rights and safety of women.

Thank you in particular for this emphasis on the psychological violence that can manifest, as we saw in Lori's case and in Theresa's case, in very subtle things that don't look unreasonable to somebody looking in from the outside, but feel very scary to the victim.

So thank you again. As I have said before, we'll put forward an amendment that I hope reflects your concerns.

Ms. Lois Smedick: Thank you.

The Chair (Mr. Shafiq Qaadri): Mr. Dhillon?

Mr. Vic Dhillon: Thank you very much for your presentation. As well, thank you for bringing awareness to this issue.

Given that this bill has a harassment definition meant to address all forms, from bullying to psychological harassment at the workplace, and that employers are required to have programs to address violence and harassment, would you agree that this would go a long way in addressing problems that you mentioned in your presentation?

Ms. Lois Smedick: I think it will go a long way. We just have to keep at it and make sure we do everything we possibly can do to prevent these terrible things from happening.

Mr. Vic Dhillon: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: Thank you very much for offering up these recommendations.

I want to just get your comment, because we see as a bit of a failing in this bill not changing things to allow for getting restraining orders on a 24/7 basis, 365 days a year, as that would be a significant help to prevent violence and workplace harassment. Any comments on restraining orders and being able to get them?

Ms. Lois Smedick: I think any kinds of measures that can be taken—it's all together. They're incremental to try to achieve this end. But we've heard before—I've heard this afternoon—about education and training in recognizing signs, intervening when it is appropriate to intervene. I was just thinking of the 44 times, coming up to the murder of Lori Dupont, when there was an opportunity to intervene and nothing was done.

Mr. Randy Hillier: But that was one of the problems as well, the lengthy process to get a restraining order. If that had been done in an expeditious manner, to have that legal tool, as well as the education and training available—

Ms. Lois Smedick: It's certainly one thing, but only one thing.

Mr. Randy Hillier: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier, and thanks to you, Ms. Smedick, for your deputation on behalf of the Inquest Action Group.

I'd now invite our next presenter to please come forward: Mr. Van Beek of the Service Employees International Union.

ONTARIO ENGLISH CATHOLIC TEACHERS' ASSOCIATION

The Chair (Mr. Shafiq Qaadri): Okay, do we have Mr. Ryan and Mr. DiCiocco present from the Ontario English Catholic Teachers' Association? I'd invite you to please come forward and take your place, then.

Maybe you might just inform Mr. Van Beek that he'll be put on immediately following.

Welcome, gentlemen. I'd invite you to please begin. Do introduce yourselves. Go ahead.

Mr. James Ryan: Thank you. My name is James Ryan. I'm the president of the Ontario English Catholic Teachers' Association. We represent the men and women in Ontario's publicly funded Catholic schools.

Let me first of all state that it's a pleasure to appear before the committee, and we'd like to commend this committee and the entire Legislative Assembly for what we see as a very positive step forward in terms of adding workplace harassment and bullying to the Occupational Health and Safety Act. I think that Ontario has long been behind provinces like Saskatchewan, Manitoba and Quebec in this category, and indeed, behind the federal government, and I think it's high time that Ontario joined those provinces in recognizing that this is a critical part

of the workplace and that employees need to be protected from these things.

Indeed, I said I represented teachers in Catholic schools. Most of those teachers are women, and certainly, the actions that happened to Lori Dupont were of grave concern to all of them. I think that while it was very tragic that that did occur, perhaps a positive outcome for this will be real changes to the Occupational Health and Safety Act. Also, I would like to thank all of you that we met with during our lobby day last year, in which we talked about changes to the Occupational Health and Safety Act, and we'd like to recognize many of those changes that are in this legislation.

We see this as part of a greater issue of addressing our ongoing difficulties with creating safe schools in this province. We see this as part of that solution to ensuring that we have safe schools, not just for our employees but for all of the children of this province in publicly funded education.

You've been handed our brief, which I'm not going to read to you, but I would like to highlight a couple of sections of the brief. Specifically, I would like you to turn—well, you don't have to turn to it, but I'd like to highlight section 1.07 of the brief. Section 1.07 can be found on page 2. Again, I will concentrate on a couple of issues here.

We really would like to see the bill expanded to include some of these areas under the act, and specifically, those areas include: psychological harassment; verbal threats; intimidation; stalking; bullying, including cyber-bullying; and teasing. The reasons for this are that we think that physical violence and physical actions are important, but in many of the actions our members report to us—and we have surveyed our members on the issue of bullying, both from other adults and from, obviously, children and students in our case—psychological forms of violence are an even greater danger to our members, as they are to the other children in the classroom that they work with. But of course, the Occupational Health and Safety Act can't address that; we'll have to save that for another committee meeting. The working conditions that our members face are also the learning conditions for our children. When our members are physically harassed, I think that means that children also are capable of being harassed. So I think we have to consider that.

We do take the government's word that these will be understood to be in the act, and we will hold the government to that, I assure you; however, we do worry about our school boards in that some of our school boards will often say, "Well, it's not in there, so it can't be there. It doesn't matter what understanding you have with the Ministry of Labour or the provincial government; it's not in there." That will force us, often, when we represent the member, to use the grievance process, whereas if it was included in the legislation, that would be unnecessary because it would be black and white and it would be in there. I think that's a better way to go. If it has to go through other means, it would delay justice for the member who is being harassed, and also it will add

costs—costs to the school boards, costs to ourselves, of course—and I don't think that's a desired outcome.

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The other section I'd like to refer to is section 1.11 of the brief. That can be found, I believe, on page 4. That's the involvement of the joint occupational health and safety committees. Our feeling is, there has to be a much greater involvement of the committees in this process. Specifically, I say this with reference to hazard assessment—and I do like the term "hazard assessment" better than "risk assessment," because these are hazards. If we want to have safe workplaces, it is good to include all of the employees who work in that environment to help bring about that safe working environment, and not just management. I think that would be of real benefit to the act.

By the way, I forgot to mention that the gentleman sitting beside me is Gino DiCiocco, who is an executive assistant with the Ontario English Catholic Teachers' Association and is our resident expert, who, if you have any questions, will certainly be able to answer them.

Lastly, and I'm just going to touch on this briefly, I want to mention the issue of domestic violence and, basically, injuries that are caused by third parties in this case. We certainly have a sensitivity when it comes to children. Our teachers are always on the lookout for if a child is abused in any way. I think we need to do that too with other adults, to look at them and try to ensure that they too are not victims of violence at home. I think that is important, and we do speak to that in our brief.

I guess I will leave it at that. I'm not sure how much time there is for questions, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): There are 40 seconds a side. Mr. Dhillon.

Mr. Vic Dhillon: Thank you for your presentation. The definition of violence in this bill is meant to capture physical violence and the higher end of harassment—the definition of harassment listed on page 2 of your brief. If I understand you correctly, would clarifying this address your concerns?

Mr. James Ryan: I think a clarification would really go a long way to helping. It would address our concerns if we were to include those areas.

I'm actually going to ask Gino to comment further on that.

Mr. Gino DiCiocco: Thank you. Mr. Dhillon-

The Chair (Mr. Shafiq Qaadri): Sorry, I'll need to intervene there. Ms. Jones.

Ms. Sylvia Jones: Thank you. With 40 seconds, I'm not going to attempt to formulate a question. But you've had some specific recommendations you'll leave with us, so thank you for your presentation.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones. Ms. DiNovo.

Ms. Cheri DiNovo: Yes, thank you, Mr. Ryan. Thank you both for coming. Certainly we in the NDP agree, and we will be putting forward amendments that match your own.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. DiNovo, and thanks to you, Mr. Ryan and Mr.—

Mr. Gino DiCiocco: DiCiocco.

The Chair (Mr. Shafiq Qaadri): —DiCiocco. Thank you.

SERVICE EMPLOYEES INTERNATIONAL UNION

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter. First of all, is Mr. Van Beek present? Welcome. We'd invite you to begin your presentation on behalf of the Service Employees International Union. I'd invite you to begin now, please.

Mr. John Van Beek: Thank you very much. I'm John Van Beek and with me is Brenda Snider, who is our WSIB rep. We represent, in Local 1 Canada of SEIU, about 50,000 health care workers across the province. What our members have experienced in terms of workplace violence from patients, residents and clients—they face it every day of their working lives.

One of the things that we want to concentrate on in our presentation—and you'll notice that we also have specific amendments in our brief that we want addressed, but we want to particularly concentrate on section 43, which is up for discussion quite a bit in terms of the right to refuse. Health care workers do not have the right to refuse. They are very much in a vulnerable situation in the sense that they work alone. They're obviously always afraid of employer reprisals for anything that they may do to exercise any of their rights. We were going to bring a member here today, but again, they're even threatened with employer reprisals in terms of trying to say what goes on in certain nursing homes, retirement homes or particularly home care workers where it's always a one-on-one working relationship.

We're going to give a couple of examples, and I'm going to turn it over to Brenda to give you some sort of a flavour of what health care workers are up against without the right to refuse any unsafe, violent act that happens to them by a resident, a patient or a client in the health care sector.

Ms. Brenda Snider: The following violent attack occurred in one of our nursing homes. It happened in the early morning at the end of a night shift in March 2008; this is when workplaces operate with the least amount of staff. An RPN was viciously assaulted not once but twice by a resident in the workplace. The assault consisted of punches to the arms and hands as the worker tried to block punches to her face. The attacker repeatedly tried to hit the worker in the face. She suffered scratches to both arms and was also hit in the chest, back and shoulder. Her hands and fingers were squeezed, twisted and bent. There were also injuries and bruises to the left leg, foot and upper thigh/groin area. The resident still held onto the worker's hand and fingers while she was falling. The worker, while preventing herself from falling on top of the resident, injured her lower back. She was

also pushed back against the desk and around the nursing station. The chart rack was also pushed into her.

A WSIB claim was filed and our member was off work for some time. The employer offered modified work in the same unit she had been attacked in—hardly a place safe from further assault.

In another nursing home in downtown Toronto whose clientele is a younger disabled population, workers are assaulted every day. A personal support worker walks the fence line outside full-time so that drugs and alcohol are not passed through. The doors are locked, and staff have been told they cannot leave the building once they have entered for their shift. This is because a worker was attacked and punched by a resident trying to get out of the building. This same resident had assaulted another worker just previously that evening. This was just recently this year.

A resident who had not bathed in some time and had head lice was admitted to the facility. The employer instructed the workers to struggle to bathe this new resident. It has been reported to SEIU that it took five employees to bathe him. They were kicked, punched, scratched and even bitten. The workers received not only physical abuse but verbal as well. One of the workers was kicked so hard in the stomach when attempting to give care that it knocked her backwards and left significant bruising to the stomach. She was off work for a few weeks. This was in the fall of last year.

At another workplace, workers are assaulted and told by their supervisors to suck it up, that it's part of the job.

Violent patients: They know exactly where to hit. In our hospital, we had a member who was slammed against a wall and injured her back. She was off for two weeks. It became a dance. HR explained that it was the nature of her work in dealing with sick people. The union representative said to call the police and lay charges. These are hard decisions to make as a member. We need a protocol to follow so that the employers, nursing associations, unions, government etc. protect the workers instead of paying lip service to what a member or employee needs to do.

As in our everyday society, it falls under the umbrella: Can you prove it? All the feasible measures are in place. Security walks to the parking lot, investigating but careful about accusing. At the end of it, we have a member who is made to feel threatened, not just in her workplace but in her everyday life.

Violent families: We need training for our members who are not nurses. They are out of their element when dealing with escalating clients or families.

A resident was found with blood and a contusion of three centimetres by three centimetres on the occipital region of the head. She was in her wheelchair and wasn't able to get in or out without assistance. It was never determined how she was injured.

Mr. John Van Beek: I just want to comment that if, indeed, our nursing home workers, for example, are assaulted by a resident, possibly with dementia or whatever other condition, and the police are called, the police

are very reluctant to get involved in those kinds of situations and do not try to lay charges because of the issue in terms of very old people. Nevertheless, our member has suffered the injury and has to deal with the WSIB, and then in terms of if there is accommodation to work, as Brenda points out, they're generally placed on the same ward as the violent resident. We haven't addressed those kinds of issues in any of our legislation as far as the new Nursing Homes Act is concerned or any of that sort of thing. Here's an opportunity to strengthen those kinds of provisions under this act, and we would hope that the committee would look at it.

1720

We have some very, very specific recommendations in terms of the wording in our legislation. I just want to reiterate that clearly, the joint health and safety committee is going to need to take a very active role. There's no indication in the amendments that the joint health and safety committee is involved in the violence procedure. Your amendments now as they stand currently say that the employer has to take a responsibility. We suggest that in terms of the way the workplace structures are organized now, there is a dual responsibility, and we want to make sure that that dual responsibility also extends to the workplace parties when it comes to violence.

In addition, the employer will appoint the coordinator in this act, the violence coordinator specifically. We suggest very strongly that that be done through the joint health and safety committee so that everybody in the

workplace has ownership of that.

I think I'll leave it there. As I say, we do have quite a few specific amendments, but you can take a look at them at your leisure.

The Chair (Mr. Shafiq Qaadri): Forty seconds per

side, beginning with Mr. Hillier or Ms. Jones.

Mr. Randy Hillier: This is where we run into a bit of a problem, when the nature of the workplace can indeed be violent. That may be the nature of you dealing with people with dementia or whatever. We've heard lots of examples of nursing home violence in the past. How do you actually see that, in practical terms, being dealt with?

Mr. John Van Beek: First of all, you simply make it a staffing standard that is adequate, that ensures that patients and residents receive adequate care. If there is adequate care, the level of violence may go down very

significantly.

Mr. Randy Hillier: The level of violence may go down if there's more staffing? Is that—

Mr. John Van Beek: Yes, absolutely.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier, Ms. DiNovo.

Ms. Cheri DiNovo: Yes, absolutely: The level of patient care, as far as the NDP is concerned, is not nearly adequate. We've been fighting for this for a number of years, as you know—that the level of care per client per day go up.

Just one quick note on the joint health and safety committees: I heard on another committee that fewer than half of all workplaces that are mandated to have them

actually do have them. That's another issue which is a WSIB issue, but it's something that needs to be noted and recorded.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. DiNovo, Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much for your presentation. Just a point of clarification about something you mentioned, that the health care workers have a limited right to refuse: Under this bill, they will continue to have that right and the reprisal provisions under OHSA would apply to these workers as well under Bill 168. I just wanted to make a—

Mr. John Van Beek: No. You've absolutely wrong. The problem is that in terms of dealing with violent clients, residents and that sort of thing, if they need care then the worker does not have a right to refuse because they have to take care of the resident, patient or client. That is the significant issue. We have to know for sure, in terms of risk assessments, what kind of people we're dealing with out there.

The Chair (Mr. Shafiq Qaadri): Mr. Van Beek, I'll need to intervene there. I'd like to thank you for your deputation, Mr. Van Beek and Ms. Snider, on behalf of the Service Employees International Union.

THE RAISING AWARENESS CENTRE FOR BULLYING PREVENTION

The Chair (Mr. Shafiq Qaadri): I would now invite our final presenter of the day, Ms. Monaghan, director of TRAC, and I'll let you explain that. Welcome. Please begin.

Ms. Angela Monaghan: I appreciate this opportunity to address the standing committee on Bill 168. My name is Angela Monaghan and I'm the chairperson of the board of directors for the Raising Awareness Centre for Bullying Prevention. The acronym is On TRAC for Bullying Prevention. I'm an educator with the Ontario College of Teachers and a counsellor with the Ontario Association of Counsellors, Consultants, Psychometrists and Psychotherapists. This is mentioned to explain my background and perspective regarding the programs that On TRAC for Bullying Prevention runs and the message I share with you today.

In 2003, I started a support group for adults experiencing bullying in the workplace and was surprised by the immense need. The organization has since expanded, and a brief summary of the various programs offered are in your handout. Several organizations have come before you and given you a variety of statistics, so I don't feel the need to deliver those again. Rather, because I work directly with those involved in the bullying experience, I feel I can bring to you a perspective that is theirs. Any of the personal experiences I share come with the permission of the individual involved, without any identifying features, and it's for the sole purpose of helping you understand the need for Bill 168 and the proposed amendments.

The province of Ontario and its legislators need to be congratulated for their desire and efforts to bring about positive change in the workplace. Bill 168 is an attempt to do such; however, the wording lacks necessary strength to be truly effective. Bill 29 is better.

It is essential that employers create valid policies to prevent physical and psychological violence. It's also essential employers and employees collaborate to ensure the processes meant to resolve issues actually resolve issues, that they are designed to solve problems, not manage them through institutional bullying strategies. Employer policies are most definitely needed, but they are not enough if it is the employer who develops, implements and enforces the policy.

There is also a lack of consistency when each individual employer is responsible for the policies and there isn't an effective government body overseeing the implementation of the policy. When the creator and implementer of a policy is the same body who ensures it is followed, the path is cleared for institutional bullying.

It is important that employers, particularly large employers, have their own internal investigators that act in supportive and impartial ways. At the same time, there needs to be an external body for monitoring and assistive purposes. An employee should have an option to have their issues resolved, either through the internal or external body. This option needs to be present to safeguard against the few unethical employers who manipulate the internal body.

An example of this is a target who suffered incredible bullying from his supervisor. When this man filed his complaint with HR, an internal investigation began. This man had the support of many of his colleagues and they were willing to be questioned regarding the abuse. However, of the list of colleagues the target submitted to HR, only four were questioned. Of these four, two of the colleagues were contacted the day before questioning, threatened by the supervisor and instructed how to respond to the questions.

Upon completion of the internal investigation, this man was told there were no grounds for his complaints, as all of the colleagues questioned validated the supervisor's actions. This target was instructed that the consequences of speaking about the issue, both inside and outside of the organization, would result in dismissal. He did so anyway and asked the colleagues what happened in the investigation.

He has signed affidavits from the colleagues who received threats from the supervisor, outlining the threats. He also has signed affidavits from the other colleagues stating they in no way supported the supervisor, even though HR concluded they did.

When this man approached HR about the poor manner in which the internal investigation was conducted, he was offered a negotiated departure with an accompanying gag order. Seeking justice, he consulted a lawyer, who advised him to take the money and run.

This target's experience is not an isolated event. I've dealt with many targets with similar experiences, whether

represented by a union or not. Unfortunately, Bill 168 currently ignores essential components in order to make it effective. Sections 32.0.2 and 32.0.3 place all accountability upon the employer and indicate it is the employee's responsibility to report and follow up to ensure complaints are legitimately dealt with.

This allows corruption and secrecy to thrive. This means traumatized employees find themselves further traumatized by a bullying institution that loops into itself so many times, employees quickly realize that an unsafe working environment, rife with physical and psychological threats, is paradise in comparison to the process designed to silence anyone who dares request justice.

One example of this is a woman whose employer has insinuated that if she completes WSIB incident reports, she will be thrust into the same resolution process her former colleagues endured. This woman is experiencing a physically unsafe work environment and feels threatened against reporting it; thus she is being psychologically harmed as well. Because she needs her job, she feels there is little that can be done.

This is only an example of a workplace that is physically unsafe, but in trying to rectify the situation, the workplace became psychologically unsafe as well. Unfortunately, the processes in place to resolve issues in the workplace are adversarial in nature. Many have reported that the process is crueller than the problem it was supposed to solve.

This applies to the stages of victimization that are outlined in your handout. The bullying behaviour is the first stage of victimization. Inadequate processes that are intended to resolve issues but instead loop inside of themselves and are so impersonal and prolonged that they end up bringing on the second stage of victimization—Bill 168 needs to address this, otherwise the target naturally moves into the third stage of victimization, where psychological and physical ailments ensue. It is from this stage that healing is an arduous and lengthy process. It is in this stage that incalculable health care dollars are spent and human potential is lost.

I have been contacted by many union representatives and some employers who are struggling to deal with workplace bullying. Psychological violence is difficult to prove in a drawn-out and adversarial system. Thus, the definition of "workplace violence" needs to include the phrases that define all forms of violence. In your handouts, you will find some examples of psychological violence. Inclusion of these phrases is essential if Bill 168 is to be an effective tool in preventing workplace violence or in dealing with it when it arises. Without clear and effective wording, the door is open for numerous complaints that, although they are not groundless, may be difficult to prove, thus causing more harm to employee and employer.

The human rights definition of harassment is too narrow in that it can only occur towards someone of protected status. However, the code does accurately describe it as vexatious conduct and comment "that is known or ought reasonably to be known to be unwelcome." This is

good, and it's hoped that Bill 168 will expand upon this definition and include key terms, particularly "abuse of authority."

It should also acknowledge the escalation of bullying behaviours or the culminating effects of ongoing psychological abuse, including covert threats and isolation. An ounce of prevention is always better than a pound of cure. Bill 168 needs to encompass both the encouragement of prevention and policies for the cure.

Also in your handouts are some guidelines for a healthy workplace environment, successful prevention policy components and a list of qualities that unhealthy and healthy organizations possess. This list was included in a presentation I made at the 2008 international work-

place bullying conference.

An additional difficulty with investigations is the standard accompanying gag order. This means there is no transparency or guarantee of consistency in the manner in which investigations are handled. It is hoped that an external investigator could address this problem. On a practical level, this means that a serial bully in the workplace who has had a number of complaints made against him or her is able to be investigated each time as if the bullying behaviour is new. When each complaint is investigated, it is viewed in isolation rather than as a repeated pattern, which is a part of the definition of bullying. Without the acknowledgement of the pattern, the bullying cannot be adequately resolved and is at risk of being perpetuated.

Unfortunately, these gag orders also tend to come with a negotiated departure, in many cases robbing the target of their career. Switching jobs is not easy at the best of times, let alone during hard economic times. The problem with lengthy processes is that they benefit those with deep pockets, not those necessarily in the right. Additionally, the target feels vulnerable due to the destabilization caused by bullying behaviours. It's important that the process to resolve issues does not increase the target's vulnerability.

The Chair (Mr. Shafiq Qaadri): About 30 seconds left.

Ms. Angela Monaghan: Health care and education are the most common fields where workplace bullying occurs. If these two institutions are considered the safe ones in our society, then we have a problem. Workplace bullying in a school setting not only impairs student education; it teaches children that bullying is the path to success. Student bullying is reinforced when adult bullying exists in a school.

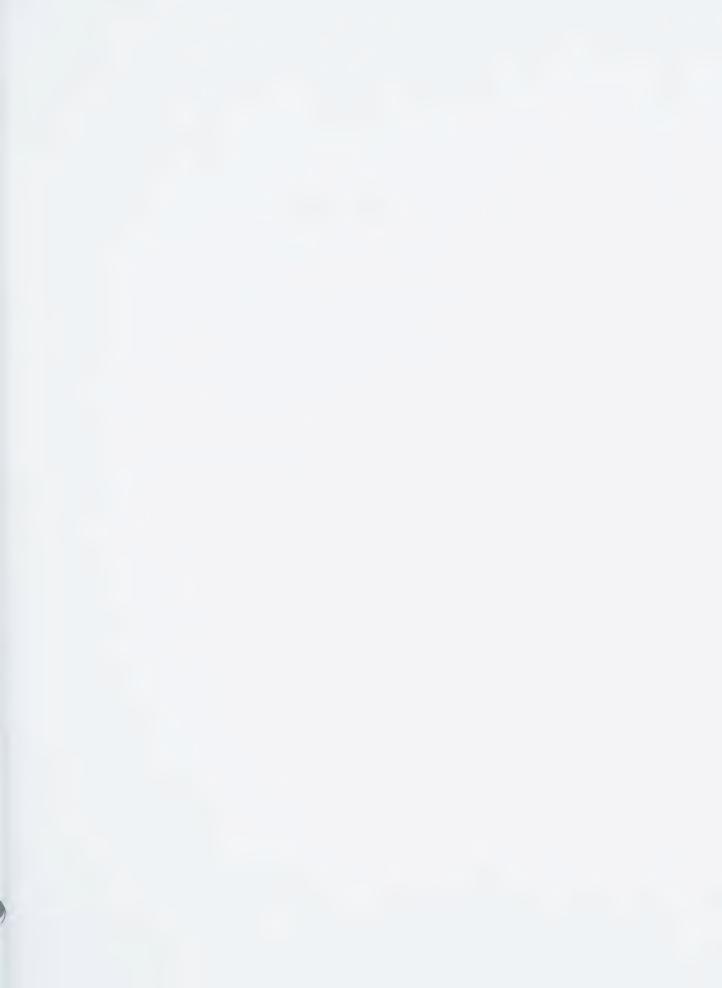
Psychological harassment is a health and safety hazard. The longer this fact is ignored and evidence of it is swept under the rug of indifference and feigned lack of knowledge, the more unseen costs to health care and loss of valuable human contributions arise.

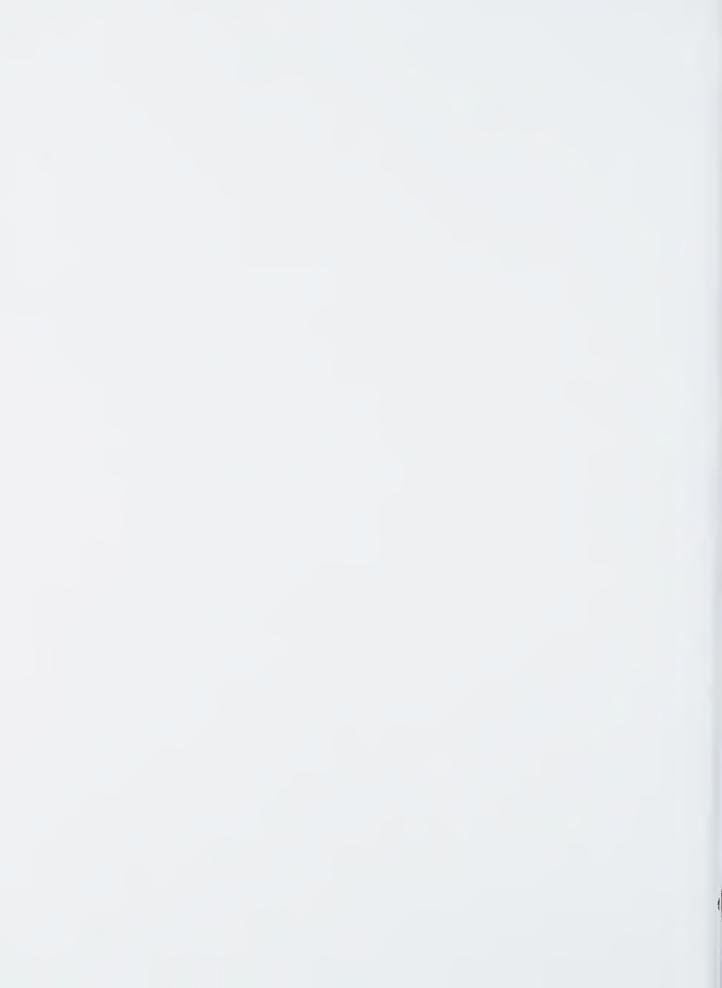
The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Monaghan, for your deputation and written submission on behalf of the Raising Awareness Centre for Bullying Prevention, TRAC, as you've mentioned.

If there's no further business before the committee, we are adjourned until 4 p.m. tomorrow in this room. Thank you.

The committee adjourned at 1730.







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Tuesday 24 November 2009

Standing Committee on Social Policy

Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace), 2009

Assemblée législative de l'Ontario

Première session, 39^e législature

Journal des débats (Hansard)

Mardi 24 novembre 2009

Comité permanent de la politique sociale

Loi de 2009 modifiant la Loi sur la santé et la sécurité au travail (violence et harcèlement au travail)

Chair: Shafiq Qaadri Clerk: Katch Koch Président : Shafiq Qaadri Greffier : Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Tuesday 24 November 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Mardi 24 novembre 2009

The committee met at 1556 in committee room 1.

OCCUPATIONAL HEALTH AND SAFETY AMENDMENT ACT (VIOLENCE AND HARASSMENT IN THE WORKPLACE), 2009

LOI DE 2009 MODIFIANT LA LOI SUR LA SANTÉ ET LA SÉCURITÉ AU TRAVAIL (VIOLENCE ET HARCÈLEMENT AU TRAVAIL)

Consideration of Bill 168, An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace and other matters / Projet de loi 168, Loi modifiant la Loi sur la santé et la sécurité au travail en ce qui concerne la violence et le harcèlement au travail et d'autres questions.

Le Président (M. Shafiq Qaadri): Collègues, j'appelle à l'ordre cette séance du Comité permanent de la politique sociale.

We'll begin the hearings, as you know, on Bill 168, An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace and other matters.

As my colleagues and all members can see, we have a vote in approximately 25 minutes, so we'll obviously adjourn within reasonable transport time for that.

We have protocol, as you know: 10 minutes per presenter. That will be strictly enforced with military precision.

CANADIAN AUTO WORKERS UNION

The Chair (Mr. Shafiq Qaadri): I would invite now to begin the day's proceedings Ms. Sairanen and Ms. White of the CAW, the Canadian Auto Workers union. Welcome; I'll be starting your time in a moment. Please do introduce yourselves individually. That, of course, goes for all presenters as you are being permanently recorded in Hansard. Please begin.

Ms. Sari Sairanen: Great. Thank you very much. My name is Sari Sairanen. I'm the national health and safety director of the Canadian Auto Workers union.

I have two colleagues with me. On my right are Julie White, the director of our women's program, and Jamie

Wright, who is the chair of the CAW's health and safety committee.

Bill 168 introduces enhanced protections against workplace violence, new measures to address workplace harassment, and a pioneering measure to include violence and harassment that occur as a result of domestic violence.

While this legislation is an important step forward, in its current form the bill separates definitions of "workplace violence" and "workplace harassment," and sets out separate provisions to address workplace violence, harassment and domestic violence. The result is that the legislation continues to emphasize the risk of physical violence rather than focusing on the continuing behaviours that result in risk to safety, well-being and health.

Ms. Julie White: My name is Julie White, director of the women's programs for the Canadian Auto Workers union. I'd like to speak to the importance of ensuring that workers have the right to refuse work, based on serious harassment and/or violence in the workplace.

We believe that a worker who has reason to believe that workplace-related harassment or violence is likely to endanger him or her must have the right to refuse work under the Occupational Health and Safety Act.

It's imperative that a worker who is facing harassment or violence in the workplace have the same protections under the act as a worker who faces any other workplace hazard. Harassment and violence should be recognized for what they are: workplace hazards.

The right to refuse work, in the cases stated above, was first negotiated between GM, Ford and Chrysler and the Canadian Auto Workers union in December 1994, nearly 15 years ago. While most issues of sexual harassment continue to be handled through the joint harassment policy, both the union and the company recognized and understood the need for added protection mechanisms for workers who find themselves facing serious cases of harassment and/or violence, including threats of violence. The union and the employer understood that if unresolved, the situation could potentially escalate to a more serious situation.

The CAW's experience with the right-to-refuse language indicates that there is a very low number of recorded incidents where the right to refuse was enacted by a worker. This was not achieved merely by the policies and procedures alone, but by joint collaboration between the union and the company to create a culture in the

workplace that clearly supports safe and healthy workplaces through enforceable policies, procedures and workplace training. The right to refuse, in our experience, is not a detriment to employers, as others may have led you to believe, but in reality has been a successful collaboration over the last 15 years.

The right to refuse has developed a workplace culture that fosters healthier relationships and creates safer workplaces for everyone. It took courage, nerve and, yes, even guts 15 years ago from a small group of people who had the vision that they could create a workplace free from harassment and violence. Today, you have that same opportunity.

Thanks for your attention.

Mr. Jamie Wright: In addition to the other comments, I would like to focus my time on the application and deficiencies of section 50 of the Occupational Health and Safety Act as it applies to Bill 168.

Section 50 of the Occupational Health and Safety Act, as you know, provides protection to workers from reprisals by the employer for exercising their rights and seeking enforcement under the Occupational Health and Safety Act. Bill 168 will give employers additional duties and responsibilities, and also provide workers extended rights such as the right to refuse when they have reason to believe they could be harmed due to workplace violence and harassment.

This is good, but the problem is that if a worker has experienced violence or harassment in the workplace, it is conceivable that they would be intimidated in many ways by the employer or supervisor not to exercise their rights, such as the right to refuse work, thus in a round-about way making these rights ineffective to the worker. In practical terms, I would suggest that section 50 does not provide the protection it should to a worker who is looking for the act to protect them, especially if they're facing violence or harassment in the workplace. Let me explain what I mean.

If a worker feels they've been reprised against, intimidated or coerced by the employer or supervisor because they have sought protection under the act, they have two options available to them to deal with the reprisal: (1) They can file a grievance, if they're a unionized worker, or (2) they can file a complaint with the Ontario Labour Relations Board by filling out form A-53. Neither of these procedures is effective in the short term. They take weeks or months to reach a resolution. I would suggest to you that filing a complaint with the Ontario Labour Relations Board is an involved procedure that most workers would have difficulty completing per the board rules—and would most likely not pursue the complaint and suffer through the effects of reprisal from the employer.

The Ministry of Labour can and should take a more active role, as in the other Canadian jurisdictions. Bill 168 should be amended to give inspectors the power to investigate section 50 complaints of reprisals on workers. These powers should include the ability for inspectors to issue orders and recommend prosecutions. Amending

section 50 of the Occupational Health and Safety Act would provide workers with one more layer of protection from harassment and violence in the workplace, adding teeth to Bill 168, reinforcing the message to workplaces that any interference with a worker seeking the very protection Bill 168 provides, through intimidation and coercion, will be dealt with immediately and strongly by the Ministry of Labour and its inspectors.

Ms. Sari Sairanen: In summary, we would like to have seen a violence regulation instead of amendments to the Occupational Health and Safety Act. The definition of violence excludes psychological violence. There is a lack of recognition of violence as an occupational hazard. There is a lack of recognition of joint health and safety committees' and/or health and safety representatives' role in the workplace. As well, the right to refuse excludes psychological violence and harassment. And as my colleague Jamie has elaborated on regarding section 50, reprisals remain untouched.

That is our submission.

The Chair (Mr. Shafiq Qaadri): Thank you very much. We have a minute or so per side, beginning with the Progressive Conservative caucus. Mr. Hillier.

Mr. Randy Hillier: It's clear that this bill has generated a lot of interest, as seen by the number of people in attendance. I'm also quite surprised to see the number of submissions from people who, unlike you, didn't get the opportunity to make a deputation to this committee. I think it's clear that the government should allow for more time during committee to actually hear from these people, hear their good comments and make amendments where required.

The Chair (Mr. Shafiq Qaadri): Ms. DiNovo.

Ms. Cheri DiNovo: We in the New Democratic Party absolutely agree, and plan on putting forward an amendment to extend the definition of violence to include psychological violence, harassment, bullying etc. I appreciated your comments too about workplace inspection—just a comment aside that health and safety committees exist in less than half of the employers. That's part of our problem, of course, but there need to be regulations to make sure that whatever we pass here is enforced. That's problematic as well, but we'll do our best. Thank you for coming before us.

1610

The Chair (Mr. Shafiq Qaadri): The government side: Mr. Dhillon.

Mr. Vic Dhillon: Thank you for appearing before us today. I know you folks have been working with the ministry on this issue.

Would you agree that the policy and program approach in the bill is a good start for raising awareness and beginning to deal with harassment in the workplace?

Ms. Sari Sairanen: Well, it certainly is a good beginning. We appreciate the opportunity to appear in front of the committee and look forward to further discussions on this, as we stated in our submission. This is a good beginning, but it's not the end.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Dhillon, and thanks to you, Ms. Sairanen, Ms. White and Mr. Wright, for your deputation on behalf of the Canadian Auto Workers.

The Chair would ask the committee: Shall we proceed with one more presenter for a further 10 minutes, which will clock us down to about five minutes to the vote, or adjourn now?

Interjection: I think we can go on.

The Chair (Mr. Shafiq Qaadri): All right, fair enough.

COLLEGES OF ONTARIO OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATORS

The Chair (Mr. Shafiq Qaadri): I now invite Ms. Mulroney, of the Colleges of Ontario Occupational Safety and Health Administrators, to please come forward. Welcome. I'd invite you to please begin now.

Ms. Kim Mulroney: My name is Kim Mulroney, director of employee health, success and continuity at Seneca College. I am here today representing the views and recommendations of the Colleges of Ontario Occupational Safety and Health Administrators committee, an advisory committee under the framework of Colleges Ontario. We are a professional association of occupational health and safety management staff and practitioners at the 24 colleges of applied arts and technology in Ontario, and we appreciate the opportunity to provide input to proposed Bill 168.

We recognize that workplace violence represents a very real safety hazard to workers, and should be addressed, like other safety hazards, from within the regulatory framework of occupational health and safety. Other provinces have introduced workplace violence legislation under their respective health and safety laws, and we applaud the government of Ontario's move to adopt similar laws.

This piece of legislation has been long awaited—perhaps too long for the victims of workplace violence and their families—and we do not want its intent to be compromised or diminished in any way.

Our concerns lie primarily with operationalizing this piece of legislation, based on language, in some sections, that is somewhat subjective and ambiguous. However, we do believe that, with some minor alterations, the intent of the bill can be protected and employers will be able to comply without causing undue burden in terms of responding to frivolous complaints. It will also ensure that the publicly funded business of colleges—the education of students—continues without unnecessary interruption.

There are workplaces, such as our provincial colleges, that are not solely comprised of workers with clearly defined duties and responsibilities under the Occupational Health and Safety Act. Our campuses include children in special programs, teenagers and those retraining for new careers or to upgrade their careers. Due to the makeup of our campuses, the post-secondary education

system offers unique challenges to addressing workplace violence and harassment.

In regard to the definition of "workplace violence," our committee endorses the proposed definition, as it uses the words "the exercise of physical force" or the "attempt" to use "physical force." This precise use of language clearly identifies the types of actions that would constitute workplace violence or the threat of workplace violence. This is very helpful, as we anticipate that without the use of clear, unambiguous language, there will be allegations of workplace violence and work refusals related to those allegations that were not envisioned when this bill was created.

However, in regard to section 43, the right to refuse work, we believe that the wording "workplace violence is likely to endanger himself or herself" is subjective and open to interpretation in regard to when a worker can refuse work based on workplace violence. We recommend that precise language, similar to what appears in the definition of "workplace violence," be used instead. An example of wording might include "the exercise of physical force by a person" or "the attempt to exercise physical force by a person against a worker is likely to endanger himself or herself."

This revision in section 43 will ensure that the work refusal process is not used for minor disagreements or negative comments that may occur between staff members and students within the classroom environment. These types of interactions do occur and are inherent in the duties and responsibilities of front-line staff and faculty, and should not be included within the scope of the proposed bill. We believe they are best managed through codes of conduct or similar policy and procedures.

Turning to the subject of workplace harassment, we endorse that workplace harassment is not grounds for a work refusal. However, we are concerned that the proposed language will result in claims of workplace harassment against our students by our employees. Students are clients. They have certain expectations in regard to their education, and will voice their opinions. Indeed, the exchange of thought and ideas and the ability to challenge beliefs and theories is an integral part of the teaching and learning process, and we do not believe this would constitute workplace harassment. We believe that, for the most part, these exchanges are inherent in the duties of front-line staff and faculty and, again, are best addressed through codes of conduct or other forms of policy and procedure where necessary.

Therefore, in regard to workplace harassment we recommend that the definition be revised to indicate a course of vexatious comment or conduct that is intended to demean, belittle or cause personal humiliation or embarrassment and any act of intimidation or threat. Workplace harassment is normally a series of incidents, but can exceptionally be one severe incident that has a long-lasting impact on a worker. It would also be helpful to indicate that the legitimate and proper exercise of management's authority does not constitute workplace harassment, as we believe this will also be an issue.

In regard to domestic violence, we acknowledge and appreciate both the seriousness and complexity of this topic. However, we believe that domestic violence is sufficiently addressed within the proposed definition of workplace violence. We are unclear why there are additional requirements linked to domestic violence compared to workplace violence. Requiring employers or supervisors to take steps when they "ought reasonably be aware" that domestic violence would expose a worker to physical injury is purely subjective and requires employers to have a level of understanding beyond what might be considered reasonable in regard to the duties of an employer. We therefore recommend that section 32.0.4 be removed.

"Provision of information"—subsection 32.0.5(3) causes concern given our diverse and complex environment. Our workplaces are comprised of workers, students, visitors, clients and contractors. The requirement to provide personal information about a person with a history of violent behaviour is almost impossible to achieve. It would require a level of knowledge that isn't attainable without a criminal background check. In addition, there are college programs specifically targeted towards at-risk youth. It is conceivable some of these students may have a history of violent behaviour for which they have paid their debt to society. That is the role of post-secondary education, to provide access to education. We do not believe that a history of violent behaviour in itself warrants the disclosure of personal information, and we do not want to discourage those who are seeking rehabilitation through education. Therefore, it is our recommendation that this be amended to indicate that information regarding an individual with a history of violent behaviour is to be provided if the risk of workplace violence is likely to occur in the workplace and expose the worker to physical injury. This is consistent with the definition of workplace violence.

Finally, the creation of a workplace violence prevention program, including a risk assessment and a process to address workplace violence, will require a significant time commitment due to the complexities that have been mentioned. We recommend a phase-in period be permitted to provide the necessary time in order to create the required policies, programs and procedures. With the fiscal constraints the public sector is currently facing, the resources are not likely available and will have to be prioritized within individual organizations.

In conclusion, the Colleges of Ontario Occupational Safety and Health Administrators committee is in support of the intent of this bill, but would ask that you consider our submissions as we believe we have significant experience and insight in identifying areas of concern. We believe our revisions will further improve upon the standards to which employers are held in protecting the health and safety of workers in Ontario in a responsible and measured fashion and will ensure the original intent of the bill remains intact and that business will not unnecessarily be interrupted.

Thank you for your time.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Mulroney. Thirty seconds a side. Ms. DiNovo.

Ms. Cheri DiNovo: Because of the cases of Theresa Vince and Lori Dupont and other submissions we are planning on amending the definition of violence to include psychological violence. Would you be in favour of that? It doesn't seem from your submission that you would

Ms. Kim Mulroney: I would with a very clear definition, something that gives us something to rely on when we're defining those incidents.

Ms. Cheri DiNovo: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. DiNovo. To the government side, Mr. Dhillon.

Mr. Vic Dhillon: Just a couple of things: Can you clarify your concerns with the provision-of-information clause? Secondly, as the bill stands, the employer's duty would kick in when the worker's likely to encounter this person at work and is likely to be exposed to physical injury. Are you suggesting more limitations to this clause?

Ms. Kim Mulroney: In our environment it would be very difficult because that hazard could be a student, and we do not necessarily know the background of our students. As I said, we target—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Dhillon. To the PC side, Mr. Hillier.

Mr. Randy Hillier: Thank you very much for your comments. I believe they have lots of merit. Clearly, 30 seconds does not allow for a thoughtful discourse and discussion. Hopefully, we can get some more time in this committee for discussion and debate.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Thanks to you, Ms. Mulroney, for your deputation on behalf of the Colleges of Ontario Occupational Safety and Health Administrators.

I inform my colleagues we have approximately five minutes in which to vote, and despite the constant optimism of some, should the government not fall, we will be returning. Committee is recessed.

The committee recessed from 1617 to 1627.

REGISTERED NURSES' ASSOCIATION OF ONTARIO

The Chair (Mr. Shafiq Qaadri): Colleagues, we'll reconvene. I think we'll attempt to have at least two presenters before we have to adjourn again for the next vote. The next presenter I invite now is Ms. Doris Grinspun, executive director of RNAO, and colleagues. Welcome. I'd invite you to please begin now.

Dr. Irmajean Bajnok: I am Dr. Irmajean Bajnok from the Registered Nurses' Association of Ontario. I wish to let you know that Doris Grinspun, the executive director, sends her regrets.

I am currently the director of international affairs and best practice guidelines, and the centre for professional nursing excellence at RNAO. RNAO is the professional organization for registered nurses who practise in all roles and all sectors across Ontario. Our mandate is to advocate for healthy public policy and for the role of registered nurses in shaping and delivering health services. With me today is Valerie Rzepka. She is the nursing policy analyst with RNAO.

I want to draw your attention to the package that we have provided for you. I'll highlight just a couple of insertions in that package. First is our submission. Second is a copy of the best practice guideline that we have developed related to preventing and managing violence in the workplace. There is also a copy of my speaking notes and, as well, a copy of an article in our Registered Nurse Journal that highlights very poignantly this entire issue of workplace violence.

I am pleased to speak to you today about Bill 168. Before I get into our views about this legislation, RNAO would like to acknowledge the families of Lori Dupont, Theresa Vince and the many others who have senselessly lost their loved ones to workplace violence.

Like all working women and men, nurses rely on a safe work environment. It is essential to our ability to give safe practice and quality care. Lori Dupont was a registered nurse who was brutally murdered by her former partner, Dr. Marc Daniel, at Windsor's Hotel-Dieu Grace Hospital. In its verdict, the coroner's inquest expressed the hope that its recommendations would save lives in the future with regard to domestic and workplace violence.

In tackling workplace violence and harassment, Bill 168 represents a very significant step towards improving workplace safety, but at the same time, it stops short in a number of critical areas. I will discuss three of RNAO's recommendations today: first, the need for a broader definition; second, the need for whistle-blower protection; and third, the need to replace medical advisory committees with interprofessional advisory committees, or IPACs. The remainder of our recommendations can be found in our written submission, which you all have.

It is estimated that 50% of health care workers will be physically assaulted during their professional careers. Nurses are three times more likely to experience violence than any other professional group. Given that nurses comprise over 60% of all regulated health professionals, the impact of workplace violence on both nursing and the delivery of nursing care is significant indeed.

While acts of aggression and violence are commonly considered physical, escalating levels of social, verbal and emotional violence are being found in the workplace today. Perpetrators of such violence are not only patients and their family members, but also fellow health care professionals. This sort of violence includes socially isolating a colleague, gossiping, bullying, throwing things and other aggressive behaviour.

Nursing students also experience violence in their clinical placements and in a similar manner to professional staff. This can influence a student's decision to remain in the profession. There is also concern that students may begin to assimilate this conduct in their practice, thereby perpetuating the behaviour. Sustained exposure

to violence in the workplace causes some nurses to consider leaving the profession or at least leaving one workplace to go to another. Clearly, workplace violence matters to nurses and the nursing profession.

Though Bill 168 distinguishes between definitions of "workplace harassment" and "workplace violence," this distinction fails to take into account the reality that the two are inextricably linked. They involve an abuse of power and control. Other elements such as bullying, verbal abuse and harassment, which are equally harmful to workers' health and well-being, must also be taken into consideration.

Therefore, RNAO recommends, in the strongest possible terms, that a more inclusive and evidence-based definition of workplace violence, such as the one incorporated in our guideline Preventing and Managing Violence in the Workplace, be used. This definition of workplace violence includes "incidents in which a person is threatened, abused or assaulted in circumstances related to their work. These behaviours would originate from customers or co-workers, at any level of the organization. This definition would include all forms of harassment, bullying, intimidation, physical threats, or assaults, robbery and other intrusive behaviours."

Equally alarming is the likelihood that many nurses who experience this kind of behaviour will not talk about their experiences. That's out of fear of losing their jobs or feeding further conflict and confrontation. For many nurses who find themselves face to face with violence, it is easier to suck it up and move on.

While nursing is a profession where there is a greater risk of violence, when people say, "It's part of the job," that assumes it's okay and that it's going to happen. It shouldn't, and nurses need to recognize the risk, know how to respond and de-escalate, and find ways of preventing it from happening.

RNAO encourages the commitment of the government to enact legislation to foster integrity and ethical behaviour, and maintain a workplace environment where workers can respond to workplace harassment or violence without fear of retaliation.

Though the Occupational Health and Safety Act does contain wording prohibiting reprisal by the employer, RNAO, in our guideline Preventing and Managing Violence in the Workplace, suggests that whistle-blower protection for those who report violence in the workplace must be explicit. Strong wording needs to be added to Bill 168 to protect workers who report incidents or potential incidents of workplace violence and harassment.

In addition, the Dupont-Daniel coroner's inquest jury recommended that every workplace policy to address violence should reflect an analysis of the power differentials that exist between different groups of employees, workers and staff. Until systemic and archaic hierarchies that are embedded in our health care system are addressed, these power imbalances will continue to permeate and negatively affect health care work environments. Hierarchies not only impact health care workers, they can also have adverse effects on patients and cause unsafe acts.

1640

The Manitoba pediatric cardiac surgery inquest following the deaths of 12 infants stated that because nursing occupied a subservient position within the hospital structure, issues raised by nurses were not always treated appropriately. It was clear that legitimate warnings and concerns raised by nurses were not regarded with the same respect or seriousness as those raised by physicians.

Medical advisory committees, or MACs, created under the Public Hospitals Act, are not only barriers to collaborative practice, they also reinforce inequitable power relations between physicians and other professionals. We know from the Dupont case that power differentials jeopardize both patient safety and workplace safety.

RNAO therefore calls on the government in the strongest possible terms to amend the Public Hospitals Act to replace hospital medical advisory committees with interprofessional advisory committees, or IPACs. These would represent and reflect the quality of interprofessional collaboration. We believe that every worker has the right to work in a supportive environment where workplace violence in all of its forms is not tolerated.

Thank you for the ability and opportunity to respond.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Bajnok. On behalf of the committee, I will thank you, Ms. Bajnok and Ms. Rzepka, for your deputation on behalf of the Registered Nurses' Association of Ontario, and of course extend our greetings to Ms. Grinspun as well.

ONTARIO NURSES' ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward. Linda Haslam-Stroud, of the Ontario Nurses' Association, welcome.

Ms. Linda Haslam-Stroud: Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Just to advise my colleagues, we'll be clocking down till about six minutes or so, which hopefully will provide enough time for the vote and to your colleagues. Please begin.

Ms. Linda Haslam-Stroud: Good afternoon. I'm Linda Haslam-Stroud. I'm a registered nurse from St. Joe's Healthcare in Hamilton, renal transplant. I'm also president of the Ontario Nurses' Association, which represents 55,000 registered nurses and allied health professionals, and also over 12,000 nursing students across Ontario. With me today is Lawrence Walter, our government relations officer.

In our written submission, there are a number of recommendations that should be considered that we believe are essential to keep us, the nurses, caring for our patients. You do know already that workplace violence is a growing concern for us on the front lines, and of course the risk of violence, certainly in the health care sector, is prevalent.

There's much to be commended about Bill 168, and I'd like to acknowledge the addressing of some of the risks of violence and harassment in the workplace—

certainly domestic violence spillover, the worker's right to refuse, and also the duty to address the risk related to the personal history of a person with violent behaviour. While there is much to applaud, there are two seemingly small but fundamental flaws that we believe need to be addressed to add to the value of this bill.

First, the definition of "workplace violence," which says now "the exercise of physical force by a person against a worker" is problematic. Not all workplace violence is directed at us the worker, but the workers, the nurses, are involved in violent incidents as part of workplace violence. We know that the government intended to make the workplace safe, be it directed at a worker or whether the worker is actually caught up in the crossfire as part of our duties as nurses.

The first fundamental flaw in Bill 168 can simply be corrected by amending the definition of "workplace violence"; presently it says "against a worker," and we believe it should be amended to say "against a person." We believe that that simple amendment will make employers turn their attention to what the root cause of workplace violence really is—as patients, weapons, or adverse events take place.

You may not have heard the news today, but we had a case of two gunmen coming to the Hamilton Health Sciences Corp., the Hamilton General site, and actually took a prisoner that was being cared for by that facility. That gives you a little bit of an example of where it wasn't against me, the worker, but it was a person-toperson situation that was taking place, actually, with the police.

Second, the harassment can escalate to violent behaviour which can cause physical injury. In fact, at the inquest of Lori Dupont, our member and our nurse from Windsor, where she was murdered, expert witness Dr. Jaffe—you've heard from the previous speaker—described the continuum of behaviour by the perpetrator, which culminated in her murder. During his testimony, he actually identified missed opportunities when steps might have been taken to prevent Lori's death. He talked about the very threatening and harassing behaviours, such as stalking, that fell short of physical violence and force, but which were recognized precursors to what actually happened and the physical force that ensued.

In the proposed definition of workplace violence, the definition remains confined to the actual exercise or attempt to exercise physical force and, we believe, ignores the threatening statements and behaviours at the high end of the harassment spectrum, such as stalking. We believe that that continues to be a missed opportunity in Lori's horrific death.

Accordingly, we are proposing an amendment to the definition of workplace violence to address this second fundamental flaw to ensure that the threatening statements and behaviours such as stalking are included in the measures and procedures to control workplace violence.

We have proposed two alternatives to cover the threatening statements and behaviours in our submission, and they are found on page 4; I won't go through them. Door one or door two—we've given you two opportunities to take a look at it.

In addition to these two critical changes in the definition of workplace violence, we are also proposing amendments to five other sections.

First, in subsection 52(4), we would like the act to require employers to at least report to the joint health and safety committees and to the union workplace committees so that harassment at the high end of the spectrum is taken to them. So the committees can intervene if necessary by making recommendations to the employer, calling in the Ministry of Labour, or whatever route needs to be taken.

Secondly, we are also recommending an amendment in section 32 to add, "in consultation with joint health and safety committee or health and safety representative and employers must consider the recommendations thereof." In every other hazard in the act, we have the benefit of being able to have policies, measures, procedures, controls and risk investigation. The joint health and safety committee is consulted for all those other hazards. Why not this one? The amendments in section 32, we believe, are really crucial to ensure the same level of participation for the hazard of workplace violence as for all those other hazards I mentioned.

Thirdly, we are asking for an amendment to subsection 32(2) to include the words—and you might think they're minimal—"training and educational programs." It presently says "information and instruction." The current bill says "information and instruction" versus the phrase "education and training" in the health care regulation. We want to ensure that the same level we currently have in the health care regulation of the act regarding education and training for the hazard of violence is included. We believe that, as it stands, it is actually watering down what we already have.

Fourthly, the language used in Bill 168—to "assess the risk of workplace violence"—raises concerns regarding the term "risk" versus "hazard." If I can explain a bit further, because it is somewhat complex, we need language that requires the employers to assess if there is a risk of the hazard of violence. What we're basically saying is that, presently, we only need to have the employers obligated to look at the risk; we want to eliminate the hazard. So we're suggesting amendments there, and you'll see them in our document.

Fifth, and lastly, the hazard/risk assessment under section 32 should also be provided so that the joint health and safety committees receive the information in writing. Doing so will provide the committee with concrete evidence that an assessment was actually conducted, and it will give the committee a baseline to analyze the assessment and make recommendations to the employer for a safe workplace.

While we applaud the government's actions to introduce Bill 168 and address workplace harassment and violence, which we seem to have each and every day, unfortunately, our recommended amendments will ensure that threatening statements and behaviours such as stalk-

ing, at the high end of the spectrum of workplace harassment, are covered under the legislation. Without this amended definition, this legislation will not help to prevent tragedies like the one which was inflicted on our nurse Lori Dupont.

With these and the other amendments that I have put before you in our written submission, it is our opinion that Bill 168 will be better able to meet the government's intention of making the workplace safe from violence and harassment so that we, the nurses of Ontario, can take care of our patients and provide them quality care. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you. Thirty seconds a side. Mr. Hillier or Ms. Jones.

Ms. Sylvia Jones: I just want to thank you for your presentation. You've given us some very specific amendments that we can look at and try to incorporate. Thank you.

The Chair (Mr. Shafiq Qaadri): Ms. DiNovo.

Ms. Cheri DiNovo: Lori's mother was here, as well as Theresa Vince's daughter, testifying before this committee. We're certainly going to be putting forward amendments that match yours. Thank you again for your deputation.

The Chair (Mr. Shafiq Qaadri): To the government side. Mr. Dhillon.

Mr. Vic Dhillon: I know you've been working with ministry staff to address violence and harassment issues in the health care sector. One of your suggested amendments was to change the words "against a worker" to "against a person." It appears that your concern is that a worker would not be covered if they were indirectly affected by violence in the workplace. As the bill does in fact cover these situations, would you agree that clarification of this would address your concerns?

The Chair (Mr. Shafiq Qaadri): I'm sorry, Mr. Dhillon, I will have to intervene and now inform my colleagues that we need to break once again. The committee is adjourned until post-vote.

The committee recessed from 1647 to 1659.

NONVIOLENT OBLIGATION IN THE WORKPLACE FOUNDATION

The Chair (Mr. Shafiq Qaadri): Colleagues, we'll reconvene. There's another vote pending in 28 minutes.

I now invite Ms. Lanspeary of NOW, the Nonviolent Obligation in the Workplace Foundation. Welcome. Once again, I think we'll try to do one, perhaps two presentations, and we'll recess yet again.

I invite you to please begin.

Ms. Janet Lanspeary: Good afternoon. My name is Janet Lanspeary. I am the CEO, president and founder of Nonviolent Obligation in the Workplace (NOW) Foundation, a non-profit organization.

The purpose of my presentation today is to speak to the committee about the importance of the non-violent obligation in the workplace mental health bill that I authored in 2007. The information contained in this

petition serves as a quantum leap forward in defining workplace violence not just as harassment, but all forms of psychological violence. I will now read the petition:

"To the Legislative Assembly of Ontario:

"Whereas the laws that govern health and safety in the workplace do not address the prevention of psychological harassment and all forms of psychological abuse in the workplace, this is a request for the Legislative Assembly of Ontario to enact the following bill:

"We, the undersigned, petition the Legislative Assembly of Ontario as follows:

"To implement 'the province of Ontario non-violent obligation in the workplace (NOW) mental health bill' in order to protect Ontario workers from psychological harassment and all forms of psychological abuse in the workplace.

"Repeated psychological trauma, consciously or unconsciously induced in a workplace, can result in trauma and post-traumatic stress disorder. Post-traumatic stress disorder is a serious psychiatric injury. Workplace psychological trauma can result in suicide"—and also, in the case of Lori Dupont, in death. "This bill protects the mental health of Ontario workers. This bill puts the responsibility on employers to ensure psychologically healthy workplaces."

This petition was requested, and I granted permission for it to be read in the Ontario Legislative Assembly in May 2007.

My intention today is to focus on the impact of workplace psychological trauma on its victims. This is vividly expressed by an article I will read to you written by Marty Gervais in the Windsor Star entitled "Battered by Workplace Violence."

"I don't know this woman's name. I don't know where she worked. But I do know her story.

"It's her story that's important.

"It's her story that somehow gets repeated in the lives of other people. Not the specific circumstances that pertain to her alone, but similar situations, parallel scenarios.

"I'm talking about violence in the workplace. About people being targeted by fellow workers, by managers, by individuals who go out of their way to be dismissive, who find subtle and devious ways to bully and harass, who search out every opportunity to belittle and make other people's lives miserable.

"And in some cases, resort to physical violence.

"The woman I met is a mental health counsellor. Let's call her Alice.

"Alice worked at a facility in this city dealing with mental health issues. She is articulate, educated, sensitive and organized.

"The night before I interviewed her, she confessed that she had made meticulous notes, and had them with her. But Alice didn't need the notes.

"The story she tells is lodged in her heart. It is not easily forgotten, even though it's been a year or more since she was the target of a fellow worker and a manager who felt pressured to hire her.

"And if you had asked about violence in the workplace a few years ago, she might've rolled her eyes in disbelief.

"But the following changed her mind.

"Alice landed a job as a mental health counsellor working in a different department of the same organization where she had already been employed.

"The move was a disaster. She found a manager who regularly would summon employees to his office, shut the door, and after heaping a tirade of abuse on these poor unfortunate souls, would dismiss them.

"One fellow came out, and his face was just

"white"—and you never knew what happened.'

"These tirades—or 'rages' as she described them—left many employees, including herself, feeling battered and worthless.

"'No one said anything, perhaps out of fear that if they did speak, they'd lose their jobs.'

"Stories emerge

"Later, their stories would emerge.

"Later, but only after this woman was finally fired from her job, did the tales of the others—the others who had endured this 'psychological terror'—emerge.

"But what happened to Alice?

"Her story begins with this manager finally hiring her, but only after she sought the support of the human resource department and the union.

"I think this pressured him into hiring me."

"No sooner on this job, she began to feel targeted by a fellow worker assigned to train her.

"At first, the signs of psychological abuse were subtle—mostly through dismissive juvenile grimaces at staff meetings, but soon blowing up into a monstrous burden for her to endure.

"When Alice sought support from another co-worker, whom she had petitioned to take over her training, this only inflamed the woman that troubled Alice.

"The bullying at that point stepped up, and soon Alice grew 'fearful' of this co-worker, especially after this woman confronted her: 'She stood there with her hands on her hips, and started screaming at me, telling me, "You're not going anywhere!"

"Not long after, this woman finally assaulted Alice by jamming her elbow with such force into her spine that it nearly knocked her over.

"A year later, Alice still seeks medical help for the injury.

"What followed was swift and confusing. Alice was sent home, and then over the next few weeks was fired.

"She is now fighting that decision....

"'Unless you have experienced it, as I have, you don't know it exists.'

"Now her goal, she said, is to raise the awareness of violence in the workplace, and to help others speak up.

"I want to make a difference,' she said.

"In her own situation, she hadn't 'read the signs' that she had stepped into an environment where abuse was accepted without challenge. "The final blow came the day she was fired. The union representative who had sat in on that meeting remarked to her, 'If you hear that I said to someone, "Fire that bitch," it's not true!'

"She knew then she was on her own."

Alice is no longer on her own. She speaks for every abuse victim, she speaks for Lori Dupont and, most importantly, she speaks for herself. I know this. I, Janet Lanspeary, am Alice.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Lanspeary. We have about 30 seconds or so per side,

beginning with Ms. DiNovo.

Ms. Cheri DiNovo: Thank you. In the NDP we're fighting to amend the bill to make it stronger to recognize the continuum of violence, from harassment and bullying right up to the physical act. But thank you very much for your deputation.

The Chair (Mr. Shafiq Qaadri): The government

side: Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much for your presentation. It's because of the work of groups such as yours that our government is taking this issue of violence and harassment in the workplace so seriously. Again, I just want to express thanks for your presentation.

The Chair (Mr. Shafiq Qaadri): The PC side: Ms.

Jones.

Ms. Sylvia Jones: Thank you for your presentation this afternoon. I appreciate your taking the time to put that together.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Lanspeary, for your deputation on behalf of NOW,

Nonviolent Obligation in the Workplace.

ANDRZEJ WROTEK

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward, Mr. Andrzej Wrotek, You're present? Welcome, sir.

Once again to my colleagues, we'll count down to about eight minutes, when we'll adjourn once again for the vote.

Welcome, sir. You're welcome to please begin now.

Mr. Andrzej Wrotek: This is my input for your consideration regarding Bill 168, An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace and other matters.

Bill 168, as proposed, sees human resources and management as protectors and implementers of policy which would shield workers from violence and harassment. Unfortunately, human resources and management can also be considered as perpetrators of harassment and psychological violence in the workplace—this is my own personal experience which I'm talking about.

The problem of workers abused by their management and human resources is like an iceberg: Only the tip is sometimes visible. It only comes into view when the victims resist and somebody hears their complaint. The older employees—I am 61 years old—with many years of service with the same employer cannot afford to go in

silence and are the red flag raisers. The problem will become more visible as more people approach age 60 and unscrupulous employers try to get rid of them with the help of harassment and psychological violence. Younger workers look, in a situation like this, for another job and leave when harassed by managers and human resources; nobody knows that harassment occurred.

Unchecked and unchallenged power corrupts individuals who consider themselves to be always right. Human resource professionals entrusted with unlimited power by their employers sometimes are not able to know the difference between right and wrong. This is what happened in my case, as described in the sequence of events leading to my dismissal.

Rogers Inc. human resources has a policy with respect to workplace violence and harassment. It didn't prevent them from approving the harassing actions carried out by management against myself—and consequently became the harasser. Rogers Inc. chief HR officer, Mr. Kevin Pennington, obstructed any independent effort of the HR body within Rogers Inc. to investigate if the disciplinary letter handed over to me was factually correct. This question was never allowed to be raised.

The harassing actions carried out by Rogers Inc. human resources and management caused a lot of mental suffering and depression. On a recommendation from my family doctor, I spent 10 weeks on short-term disability leave. The long-term result of Rogers HR and management actions against me is my cognitive skill deterioration, which makes it impossible to look for another job as a software developer. The stress caused by the actions of Rogers Inc. human resources and management caused a rapid change in my heart condition, which deteriorated to such a degree that I had to undergo open-heart surgery at St. Michael's Hospital in Toronto on October 26 this year. This is the fourth week after my valve replacement surgery.

It can be seen in my case that the harassment I have experienced is a form of psychological violence, which brings damage to the mental and physical well-being of the victim. It is not only harassment; it is psychological violence, which always causes deterioration of the affected individual's physical and mental condition. Older individuals like myself are more susceptible. Harassment is psychological violence and can be severe enough to cause the victim's death.

Please take my experience into consideration when defining the difference between workplace harassment and workplace violence. They don't differ much from each other when impact on the victim is considered.

With workplace violence, you can give somebody a black eye; with harassment as a form of psychological violence, you can drive the victim to suicide. In my case, Rogers Inc. HR was close to obtaining this effect. This event is documented in my family doctor's and eastern Toronto hospital's records.

I hadn't done anything wrong to Rogers Inc. and my managers. All I had done is hurt their pride and sense of total power over a fellow employee by refusing to accept—obviously, they admitted it themselves—a factually incorrect disciplinary letter. This disciplinary letter would be the only one in my 18 years' employment with Rogers. Perhaps that's why I was resisting so much, which led to the results, which were difficult to predict—started very small and ended very big.

I know this is very personal input, and perhaps too personal, but I hope the commission will take the story I told into consideration.

I have one more observation, which is not contained in a document. Perhaps it would be more effective if the human resources or management member would be personally responsible for their actions. In the current arrangement, they are shielded by corporate lawyers. If they are personally responsible or accountable for what they have done to their colleague employee, it perhaps would help to moderate the attempts—to moderate their sense of power and their desire to dominate other individuals.

This is all what I want to say. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Wrotek. We'll begin with the government, 30 seconds a side: Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much for your presentation and for sharing your story with us.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Dhillon. To Mr. Hillier.

Mr. Randy Hillier: Thank you very much for coming here. No questions right now, thanks.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Ms. DiNovo.

Ms. Cheri DiNovo: I'm so sorry for what you've had to go through. We'll try to make sure that the bill prevents others from having to suffer the same way you have done. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. DiNovo, and thanks to you, Mr. Wrotek, for your deputation, presence and written submission.

We are now at T minus nine minutes. Committee is adjourned till post-vote.

The committee recessed from 1719 to 1734.

COUNCIL OF ONTARIO CONSTRUCTION ASSOCIATIONS

Le Président (M. Shafiq Qaadri): Chers collègues, j'appelle à l'ordre une autre fois cette séance du comité de la politique sociale.

I call now our next presenter, Mr. Cunningham of the Council of Ontario Construction Associations. Welcome, Mr. Cunningham. I invite you to begin to add to the afternoon's festivities now.

Mr. Ian Cunningham: You're having fun this afternoon.

Good afternoon, Chair and members of the Standing Committee on Social Policy. My name is Ian Cunningham. I'm the president of the Council of Ontario Construction Associations, most often referred to as COCA. COCA is a federation of 31 construction employer

associations that operate for the most part in the industrial, commercial, institutional and heavy civil parts of the construction industry. We represent more than 10,000 contractor employers and we've served as their strong and united voice for more than 30 years.

It's my pleasure to have the opportunity to appear today and provide input concerning Bill 168 and ways to eliminate violence and harassment in construction workplaces.

1740

COCA endorses the goals of Bill 168: to eradicate violence and harassment from all workplaces across the province. In the construction industry, opposition to violence is already one of the absolutes in the unwritten code of conduct on construction sites. Anyone who engages in acts of physical violence on a construction site is usually fired on the spot. Even though construction work is physical in nature, takes place out in the open, fully exposed to the worst weather Mother Nature can throw at us, and provides ample opportunity for misunderstandings and disagreements within and between the many different trade crews that work together on a job, the construction industry has no tolerance for violence on work sites

It's easy to understand why the drafters of this legislation did not take the construction industry into account when developing the provisions of this bill. Despite its very significant size and its unquestioned importance as an enabler of job creation and economic growth, construction is often taken for granted, and the unique nature of construction work is not well understood and is often overlooked.

Some of the unusual features that distinguish construction work sites from other, more typical workplaces, such as hospitals, insurance companies, retail stores, government offices, manufacturing plants or even the driver's seat on a bus, and that are relevant to this bill include the following:

—Construction work is project-based, and even a small contractor could have 10 or more jobs operating concurrently at various stages of completion. Through the course of a year, projects are completed and new ones begun.

—No two projects are alike. Even if a design, such as a big-box store format or a plan for a high school, is repeated identically, the site will be different and the workforce will be different.

—The physical shape of the workplace changes every day, as a project advances through its successive stages of construction to completion.

—On a construction work site, the office, the meeting room, the lunchroom, the repair shop, the storage room and so on are often the same half-ton pickup truck.

—Unlike most workplaces, there is no resident workforce on a construction site. The workers on the site change almost daily as the project advances. The early trades complete their work. Then the middle trades take over, as do, finally, the finishing trades. None of this is in any sort of predictable pattern.

—At any one time, there are workers from many different employers/contractors working together on a job site. Teamwork and flexibility among crews are the hallmarks of a successful construction project.

—Projects for subtrades may be of short durations, and a construction worker may work for many different employers/contractors through the course of a year.

—A unionized construction employer does not hire workers based on their experience, background, technical and interpersonal skills or references but simply accepts the workers provided to him by the hiring hall.

—The construction industry has an active provincial labour-management health and safety network and a construction legislative review committee that considers all proposed regulatory changes that apply to the industry.

I want to state that it's critical that this bill works for the construction industry. The construction industry is an enabling industry that makes most other industries possible. We build the stores, warehouses, factories, offices, schools, hospitals, police stations, courthouses, pubs and resorts. We build most of the places where Ontario works and plays. The last thing that construction needs, and that our economy needs, is to allocate resources unproductively in our very best efforts to comply with legislation which, by its very design, is impossible to comply with.

Now on to our proposed solution:

In many instances in the past, special consideration has been given to the construction industry in various statutes and regulations recognizing its unique characteristics. The return-to-work regulations made under the Workplace Safety and Insurance Act specifically for the construction industry, which recently took effect, are the product of such special consideration given to the industry.

Other examples include the CAD-7 WSIB rebate program for construction employers, and the special provisions for construction that exist in the Ontario Labour Relations Act.

This bill itself provides the taxi industry, because of the unusual attributes of its workplaces, with different treatment and allows the Lieutenant Governor in Council to make regulations that are appropriate, practical and workable for that industry in order to achieve the goals of the legislation; namely, to eradicate violence and harassment from workplaces across Ontario.

We simply ask that the construction industry be given the same treatment as the taxi industry so that practicable regulations can be developed for our industry that will better serve to eliminate violence and harassment from construction workplaces.

Thank you for your time and attention, and I'd like to use my remaining time, if there is any, to respond to your questions. Again, thank you.

The Chair (Mr. Shafiq Qaadri): Thank you. Yes, about a minute or so per side, beginning with Mr. Hillier.

Mr. Randy Hillier: Thank you very much, Mr. Cunningham. It's a pleasure to hear some other views

here, because as somebody who's worked in ICI, and reading this legislation, you can see the traps and the difficulties, the impossibilities in enforcing this sort of legislation as it's presently written for the construction side. There is clearly more of a white-collar administrative perception to the legislation as far as preventing workplace violence. Without exemptions, how do you see things developing in construction with this bill?

Mr. Ian Cunningham: What we would like to see, as I mentioned in the presentation, is the same kind of—not exemption, because we favour the bill and we want to take positive steps for the industry that will achieve the goals of the legislation, but we would certainly prefer to have—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Ms. DiNovo.

Ms. Cheri DiNovo: Thank you for your submission. Clearly, this legislation was brought forward on the basis of a couple of very high-profile cases. I hope it's not only about that, but it is in part about that: both women, both escalating systems of violence. I hope this is changing, but I know that mostly you're dealing with men on the construction sites. It's a very different kind of work atmosphere.

In terms of exemptions, you talk about the taxi industry. Because your industry is very different from the taxi industry—

Mr. Ian Cunningham: Absolutely.

Ms. Cheri DiNovo: Are there specific exemptions or amendments you'd like to make?

Mr. Ian Cunningham: We'd like the opportunity, as in the taxi industry, to develop either with our employee partners or in some parallel process, to work together to develop something that is workable. A couple of the issues that jump out instantly are the posting of the policy in a visible place—now, where are you supposed to post the policy—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. DiNovo, Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much for your presentation. You raised a concern with the MOL staff of how your sector would deal with policies and programs for violence and harassment due to subcontracting situations. Assuming it would be dealt with in the same way current policies and programs are, can you elaborate on your concern about the policies and programs aspect of the bill?

Mr. Ian Cunningham: I was just about to mention the posting, and the visible place would be the inside of the windshield on a pickup truck. I mentioned that the meeting room is the cab of the pickup truck. The legislation requires that workplaces be reassessed at least annually but on an as-needed basis, and the kinds of changes that take place in the construction industry almost daily in both the shape of the workplace and the people who are working—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Dhillon, and thanks to you, Mr. Cunningham, for your

deputation on behalf of the Council of Ontario Construction Associations.

ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION

ONTARIO CATHOLIC SCHOOL TRUSTEES' ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenters to please come forward, Messieurs Kobus, Broadbent and Williams on behalf of the Ontario Public School Boards' Association. Gentlemen, you've seen the protocol, and I invite you to please (a) be seated, and (b) begin now.

Mr. Bob Williams: Thank you. Good afternoon—or evening now, I guess. My name is Bob Williams. I'm director of labour relations for the Ontario Public School Boards' Association. Joining me today is, on my left, Kevin Kobus, senior policy adviser for the Ontario Catholic School Trustees' Association, and on my right, Chris Broadbent, manager of health and safety for the Toronto District School Board and the public school boards' association health and safety representative. We thank you for the opportunity to address the standing committee today; we are here representing all school boards in the province—all four different types of boards—the four associations and the school business officials across our province.

1750

Although this bill originates with the Ministry of Labour, there are many significant implications that will affect school boards and schools. We know that you've heard from the employee side of the education sector and are about to hear some more from the employee side of the education sector. We're here today to provide the employer perspective.

Our associations fully support ensuring that schools are safe places for students to learn and staff to work—that's not in conflict at all—including through measures that address issues of workplace violence and harassment. It's important to note that many school boards currently have in place, and have had in place for many, many years, policies regarding both violence and harassment, and procedures that address the same things.

We've prepared a written submission, but for our time today we'll focus on some of our key issues. They are, first of all, the definitions of workplace violence and harassment; second, the disclosure of a person with a history of violence; third, domestic violence; fourth, work refusals; and fifth, a request for a separate and distinct education sector regulation.

I'll now ask Chris Broadbent to continue.

Mr. Chris Broadbent: I'll begin with the definitions that are included in this bill.

Workplace harassment: Harassment related to race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status, disability, gender, sexual orientation or gender

identity is currently covered by the Ontario Human Rights Code. As well, harassment is already addressed under the codes of conduct as part of the Education Act and local policy of the school boards.

Harassment is addressed by school boards through an internal complaint process, which may include discipline of an employee who has harassed another employee, up to and including termination by the board. School boards consider the responses that currently exist to protect employees from work-related harassment to be appropriate and sufficient. For this reason, we believe that Bill 168 should focus only on workplace violence.

Workplace violence: The definition is extremely broad, to include any person who causes or could cause an injury, including a student with a disability. It is important that Bill 168 take into consideration the unique nature of workplaces such as schools and other learning facilities. We know that some students with special needs may not be capable of controlling their behaviour or may not know their behaviour could cause an injury. Because of these disabilities, these students may hit, kick, push or bite. School boards have resources, strategies and accommodations to address these behaviours. These students have the right to equal treatment in obtaining an education as guaranteed by the Charter of Rights and Freedoms and the Ontario Human Rights Code.

Most recently, Bill 212 and regulation 472/02 require principals to consider mitigating factors and other factors when a student behaves inappropriately. Mitigating factors include the student's age, the circumstances of the behaviour—as an example, do they have the ability to control the behaviour or understand the foreseeable consequences?—and the student's history, before determining the most appropriate way to respond to each situation. Because of this, we are recommending that students with special needs be excluded from the provisions of Bill 168 and that the bill recognize that school boards currently follow regulations that focus on progressive discipline and promoting positive student behaviour.

It is also important to note that when we refer to students with special needs in this submission, we are referring to those students with behavioural, communication, intellectual, physical and multiple exceptionalities, which may prevent them from forming intent or knowing the consequences of their actions. We also know that not all special-needs students act out aggressively.

Our next concern has to deal with the disclosure of a person with a history of violence. The bill intends to limit the disclosure of information that is reasonably necessary to protect workers. We support that. We do, however, need to ensure that proper consideration is given to the unique nature of our working environment and the presence of special-needs students.

We agree that staff who work with a person who is known to engage in violent behaviour have the right to be trained on how to address the behaviour and to be provided with assistance or personal protective equipment where appropriate. We understand that this information is on a need-to-know basis; we need to ensure that our students and their rights are protected.

Our other concern is that there needs to be a clear definition of what constitutes a history of violence. Is one minor incident enough to create such a history? There are many instances where a student might bite or go through a biting phase, but does that mean they have a history of violence?

With regard to domestic violence, we agree that this is an issue that needs to be addressed. We recommend that a definition of "domestic violence" be included in the bill, as there are many forms of domestic relationships. Furthermore, the bill currently requires an employer to take all reasonable precautions to protect a worker against domestic violence if the employer becomes aware or ought reasonably to be aware. We recommend that an employer should take all precautions, but that the employer needs to be notified by the worker or another person. It would be very difficult to validate what someone ought to know.

At this point, I'd like to turn it over to Kevin.

Mr. Kevin Kobus: With respect to work refusals, the bill, as it currently stands, would permit a worker to refuse work or to do a particular task where he or she has reason to believe that workplace violence is likely to endanger him or herself.

Under the Occupational Health and Safety Act regulation 857, teachers are prohibited from refusing work where the circumstances are such that the life, health or safety of a pupil will be put in imminent jeopardy. The regulation does not prohibit educational assistants or child and youth workers from this. In many instances, a teacher and an EA may be in the same classroom and yet have different work refusal rights.

We recommend that the limitation on work refusals be continued and expanded to include educational assistants and any other employees who have similar responsibil-

All of the recommendations addressed here today and identified in our written submission point to the need for a separate and distinct education sector regulation similar to what currently exists for the health sector. Schools are a unique workplace, and it's important to note that not all learning occurs in a traditional school setting. Schools support a diverse student population, and students can and do receive programming in many other learning environments.

Mr. Bob Williams: To conclude, I'd like to reiterate the strong recommendation that Kevin has just made. We're very, very willing to participate actively in the development of such a regulation with our employee groups. We think it's high time that that does in fact occur, and the introduction of this legislation makes it even more important that that occur for our sector.

Thank you again for your time today. If there is time left, we'd be pleased to respond to questions.

The Chair (Mr. Shafiq Qaadri): Thank you, gentlemen. We have about 30 seconds a side. Ms. DiNovo.

Ms. Cheri DiNovo: In my constituency office, I have been privy to many teachers' tales of ongoing psycho-

logical and physical abuse, and unfortunately—I don't put this at your feet—the lack of response thereto, including having to leave work for post-traumatic stress disorder instances. I thank you for you submission. Obviously, our concern is those people, primarily those women—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. DiNovo. Mr. Dhillon.

Mr. Vic Dhillon: Thank you for your presentation. You raised a concern about the reassessment of risk assessment. This bill would require a reassessment. Would your concern be addressed if it was clarified in guidance or support material?

Mr. Chris Broadbent: As we heard earlier, I think the nature of risk assessments and the frequency of them and what needs to be considered as part of the risk assessment is an issue—

The Chair (Mr. Shafiq Qaadri): I need to intervene there. Thank you, Mr. Dhillon. Ms. Jones.

Ms. Sylvia Jones: You mentioned in your conclusion the need for a separate regulation regarding the education sector. You're not concerned that by putting it in regulation you won't have input and the ability to comment?

Mr. Bob Williams: As I suggested, we would be very interested in actively participating in the development of that regulation with our employee partners, and I would assume that should such a regulation be put forward, there would be a full consultation process.

Ms. Sylvia Jones: Regulations are a lot easier to change than legislation.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones, and thank you, Mr. Kobus, Mr. Broadbent and Mr. Williams, for your deputation on behalf of the Ontario Public School Boards' Association.

1800

PAUL MURPHY

The Chair (Mr. Shafiq Qaadri): Our next presenter is coming to us by way of teleconference. Mr. Murphy, are you on the line?

Mr. Paul Murphy: Yes. Hello?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Murphy; welcome. You have 10 minutes in which to make your presentation. The committee and Parliament are standing by for your words. Please begin.

Mr. Paul Murphy: Thank you very much for having me. My name is Paul Murphy and I was a front-line child and youth care worker in Thunder Bay from 1993 to 2005. My issues began basically from the onset of my career in 1993 with the Creighton centre. This bullying continued to escalate and my entire workplace became toxic. In 2003, I went to the executive director to bring the bullying issue forward. The entire problem was downloaded on to me, and I was encouraged to attend EAP for counselling. After 13 sessions and a brief period away from the job, I returned. Upon returning to work, my weight exploded to nearly 350 pounds. I could not sleep and I lost interest in all activities. In March 2005, I

was assaulted on the job, and this ended my career at the Creighton centre. I suffered a physical injury and lost the ability to cope.

I have been fighting with the WSIB for years to establish a claim. I went to the Smith Clinic for two years addressing my binge eating disorder with a therapist. I did attend an LMR from October 2007 to April 2008, and I was placed in a program with several ex-clients from my jail. The LMR broke down and I finally filed a WSIB claim for PTSD. My doctor ended the LMR participation and I was referred to a social worker for further counselling and supports. This involved weekly sessions, and in February 2009 I began attending group treatment on mindfulness, and I completed that program in August 2009.

OWA is addressing my WSIB issues. My mental health claim was refused because I worked as a jail guard. This makes no sense to me. I bear no ill will to anybody and I became ill from long-term bullying effects. I would not wish this on to anyone. This legislation will improve workplaces all over Ontario and it will improve situations for many.

Many want to speak to costs relating to time and insurance premiums. I want to discuss the human cost: losing your identity; losing family time; reaching dark, dark places to cope; the hopelessness; the anger; the rage; the real cost to the community. I was bullied by the employer, WSIB, Confederation College and the union, and I need this bill to reflect hope.

In closing, I want my voice to be added so as to promote healthy workplaces and encourage workplaces to invest in their employees. Bullying undermines communities, families and souls. The cost is staggering. Let's move Ontario into a "have" province by developing articulated bullying models built on hope and thus improving the lives of many.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Murphy. We've got two minutes per side, beginning with Mr. Dhillon of the government.

Mr. Vic Dhillon: Thank you, Mr. Murphy, for your presentation.

The Chair (Mr. Shafiq Qaadri): Ms. Jones of the Progressive Conservative Party. Ms. Jones?

Ms. Sylvia Jones: Mr. Murphy, do you believe that Bill 168 will resolve your issues?

Mr. Paul Murphy: I think Bill 168 is a wonderful beginning, a wonderful starting point, a very positive step in the right direction, and I think once we start moving and shifting, the natural ebb and flow is going to take over, and we're going to improve health for all Ontarians.

Ms. Sylvia Jones: Thank you.

The Chair (Mr. Shafiq Qaadri): I now offer the floor to Ms. DiNovo of the NDP.

Ms. Cheri DiNovo: Mr. Murphy, we're hoping to table an amendment that will include violence as being psychological violence as well. Bullying, currently, is just psychological violence. Would you support such an amendment?

Mr. Paul Murphy: Oh, most definitely.

Ms. Cheri DiNovo: Thank you.

The Chair (Mr. Shafiq Qaadri): Thanks to you, Mr. Murphy, on behalf of the committee for coming to us via teleconference from Thunder Bay.

ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION

The Chair (Mr. Shafiq Qaadri): I would now invite our next presenter to please come forward; that is Mr. Coran of the Ontario Secondary School Teachers' Federation, and colleagues, no doubt. Welcome, and please begin

Mr. Ken Coran: Thank you very much. We thought it only fitting, since the employer had three people here, that we should have three as well.

First of all, we'd like to congratulate the government for tackling a bill of this nature and bringing it to the forefront, because workplace violence is always a very critical factor to all people in the workforce, especially in schools, because schools are supposed to exemplify practices that we would like the whole society to show.

With me today is Dale Leckie, our director of protective services, and Lori Foote, who is our director of communications and political action.

You have our presentation. It's late in the day and I know you've been called out several times. Also, this is day three, I believe, of hearings, so I will try to be as brief as possible and summarize the content of these pages.

On page 1, you can see that we have identified two concerns. The first concern is one that we have expressed several times, and it deals with the fact that there is so much new legislation coming out that sometimes it is very difficult to coordinate different aspects of it.

With the passage of Bill 157 recently—Bill 157 was Keeping Our Kids Safe at School—there were some tremendous regulations that were developed, and we support those regulations tremendously.

However, with those regulations there is the duty to respond and the duty to report violent incidents. What that could do is come into conflict with some of the aspects of Bill 168, which is obviously the right to know. So we are saying that as this proceeds, there has to be due diligence paid to how one set of regulations could impact on the other, so that there's no confusion.

We know already that there are conflicting legalities with regard to some of the issues that a couple of previous presenters gave to you, one of which is the forwarding of pertinent information with regard to students with violent backgrounds.

We know that the vast majority of students in our schools are not violent, and we know that this legislation perhaps only pertains to a few. But it is our duty to make sure that that behaviour is corrected and that our workers are safe.

So with that in mind, we see that there are problems with federal jurisdiction and federal legalities as well as the Occupational Health and Safety Act. In other words,

what will take precedence? Will it be the Youth Criminal Justice Act that takes precedence over the Occupational Health and Safety Act, or vice versa?

We have to make sure, whatever is finalized, that there is some, I guess, grading of what the deciding factor is, so that people actually know what conditions they are working under and what they can expect to be protected by.

I'll give you an example that we were dealing with today in our organization. It is a teacher who had been repeatedly threatened by a student. The teacher obviously complained time and time again about this behaviour, and nothing was done. I'm not saying that this happens on a regular basis, but I think it's a fitting example.

Students have what is called their OSR, and certain information goes into an OSR, and that is basically at the discretion of the administration. Teachers have access to the OSR, so if there is a history of violent behaviour, they can check that out.

However, educational assistants don't have access to an OSR. Some of our educational assistants right now have termed the phrase, "I've been pencilled." When a phrase comes from a repetitive situation, it has substance. What is happening in a lot of situations now is, students are actually stabbing the educational assistants or the teachers with a pencil. We believe that our educational assistants should have the right to know that this is a type of behaviour that a particular type of student does on a recurring basis.

The situation I was referring to, though, is the violent behaviour, the threats, that a particular teacher had. Nothing was done. What happened was, one of our union people went and looked at the OSR to see if there was something in the OSR that would help this teacher in a positive nature to deal with this particular student and the behaviour.

That particular union representative is now under—I guess they have been deemed not fit for work. We are currently in a court battle because they have been suspended from work for the next six months.

Here we have a union leader who is trying to take something in an OSR that should help to work with the student, and they are being penalized and put through this undue hardship. So certainly we have concerns with regard to a situation such as that.

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I'm on page 3 now. A lot of issues deal with the implementation of effective practices, and with any implementation, that means there has to be the proper training. When you hurry through legislation or hurry through changes, a lot of times that training is not done. What we are saying is that we want to work with people so that the training is done effectively. We're not here to prevent things from improving, we're here to help, and because of that we're saying, very similar to what the public school boards' association says, that we believe there should be something that is specific to the education sector.

We believe there are regulations—and I know there's a question about regulations that was already mentioned.

We believe there should be regulations in place, because it is through these regulations that there will be actions taken. A lot of times when policy is just done, it is deemed policy, and the actual implementation of the direction of those policies—we don't see it all the time. So we're saying let's make sure there's proper training, and we want to be involved so that we could help to make sure this works properly, because the intent of it is to work. We're saying that we would like to be there to help and make it work properly.

We talk about the joint health and safety committee, and that's also mentioned in some of the bill with regard to information flowing to the joint health and safety committee. We want to make sure that those joint health and safeties are respected, because what we're seeing currently in a lot of cases is that there is tremendous breakdown in communication, so that the appropriate information is not going to our joint health and safety committees.

The last component there deals with—we want to make sure that there are regulations, as I said, as opposed to guidelines, because guidelines have no force, and we want to make sure this works.

You can see on the very final page that there is a list of six recommendations. The first one there is that regulations are developed. The second one says that we should have an education-sector-specific component of this legislation, and we would be more than willing to sit on that with our OPSBA colleagues and our Catholic colleagues to make sure that we work collectively so that schools do model exemplary practices. The other one talks about the fact that we don't want to see components of this bill removed. Instead, we would like possibly to see some things added, pending the results of these consultations. The big one right now, though, is the confusion that we believe will exist between Bill 157 and Bill 168, and we want to make sure that that is very clear so that everyone understands what their rights are and what the conditions are. I guess the most important one talks about the fact that we would like to sit on any body that does develop these regulations, because we do represent 60,000 workers—not just teachers and educational assistants; we also represent people in the university sector—and we believe that the experiences we have will lead to fruitful discussions and hopefully developing regulations that will in fact work, create schools as places that we would like everybody to be in and model exemplary practices.

So that, very quickly, is our presentation. We would love to take any questions that arise.

The Chair (Mr. Shafiq Qaadri): Thank you, gentlemen. There are 20 seconds per side. Ms. Jones.

Ms. Sylvia Jones: With 20 seconds, I'm going to thank you for your presentation.

Mr. Ken Coran: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Ms. DiNovo.

Ms. Cheri DiNovo: Ditto. Thank you for coming out. The Chair (Mr. Shafiq Qaadri): To the government side.

Mr. Vic Dhillon: Thank you. I just want to clarify: You raised concerns about the Ministry of Education regarding legislation on this bill.

Mr. Ken Coran: Yes.

Mr. Vic Dhillon: I can tell you that Bill 168 is compatible and can be implemented together with the—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Dhillon. Thanks to you, Mr. Coran, Mr. Leckie and Ms. Foote, for your deputation on behalf of the Ontario Secondary School Teachers' Federation.

VALENCE YOUNG

The Chair (Mr. Shafiq Qaadri): I call now, expeditiously, our next presenter, Ms. Valence Young, and billboard to please come forward. I invite you to please begin now.

Ms. Valence Young: Thank you. It's my pleasure to be here this evening. I am an elementary school teacher. I am also an occupational health and safety activist at the local, provincial and federal levels. I'm also a learner. I just received my master's of industrial relations from the Queen's University school of policy studies.

I wanted to share with you this evening my research, which is being handed to you, for your use and consideration in planning to move ahead with Bill 168. I researched school boards and union locals with the elementary panel across Ontario. I wanted to find out how effective the internal responsibility system is for occupational health and safety in the child-occupied workplace.

I hope you can see the chart here. This is the standard chart that I adapted with the author's agreement to demonstrate the structure of the internal responsibility for elementary schools, and actually all education sector organizations in the province, and I'll be referring to it during my discussion.

What I found was that survey participants, both management and teachers, expressed a very strong commitment to developing an effective internal responsibility system within the education sector, but the research identified specific weaknesses within the internal responsibility system, specifically teacher and principal training and the reporting cycle process for occupational health and safety issues.

I also found out that more than 60% of survey respondents identified workplace violence as a major hazard in their schools. I want to draw your attention to the Ministry of Labour 2008-09 education sector, the pages of which I've included on the last two pages of this four-page handout, and a quote from that, which says, "Budgetary constraints used for reasons for non-compliance in many areas such as ventilation, joint health and safety committee functioning, mould, violence prevention etc."

What I'd like to encourage you to do is to read the Ministry of Education sector reports, particularly for education, to see how often the term "workplace violence" is referred to as a major workplace hazard.

There will be urgent need, as you well know, members of this committee, for best practice staff training, policies and procedures in support of new workplace violence prevention programs, and I ask you to consider as a way forward with Bill 168, as the Ontario school boards' association and the Ontario Secondary School Teachers' Federation have discussed, the importance of developing collaborative committees on the subject of Bill 168, specifically, in my view, on establishing best practice templates for workplace violence policy and procedures. We need best practice templates across the province of Ontario in our schools, and a core committee of workplace stakeholders could certainly work to provide effective examples of that in the very near future.

I would like to thank you for your time. But before I close, I'd like to call your attention to page 2, where I include this lovely chart; and the other aspect is the chart below on how different organizations respond to information concerning safety, which includes the concept that developing occupational health and safety is a maturational process. So please consider those charts.

My contact information is there. I'd be happy to contribute further. Thank you so much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Young. About two minutes per side, beginning with Ms. DiNovo.

Ms. Cheri DiNovo: Thank you for this information. It certainly will help.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. DiNovo. To the government side.

Mr. Vic Dhillon: Thank you for your presentation.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Dhillon. Ms. Jones.

Ms. Sylvia Jones: With two minutes, you mention, "More than 60% of survey respondents identified work-place violence as a major hazard in their schools." Can you extrapolate on that? Is that peer on peer? Is that student to teacher?

Ms. Valence Young: There was a real variety. Certainly some of them were special education concerns. Some of them related to classroom concerns, student-worker connections. In particular, there are concerns for educational assistants in our sector and also examples of workplace bullying with parents and also administrative personnel.

Ms. Sylvia Jones: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones, and thanks to you, Ms. Young, for coming forward with your deputation.

ANNA MOSCARDELLI

The Chair (Mr. Shafiq Qaadri): I'd now invite our final presenter of the day to please come forward, Ms. Moscardelli. Welcome, and I'd invite you to please begin now.

Ms. Anna Moscardelli: Committee members, thank you for allowing me this opportunity to share with you my concerns over Bill 168. As an individual, I felt a need

to state my comments because, in 2008, I faced workplace harassment that sent me on a destructive spiral, where at times I felt just short of suicidal.

Unless one has experienced workplace violence and/or harassment, one will never be able to understand or feel what someone who has been exposed to this type of treatment goes through.

I would first like to touch on the points in Bill 168, which was on the website.

Section 32.0.1 requires an employer to have policies that are to be reviewed annually. However, this does not apply if the number of employees is five or fewer.

Section 32.0.3 sets out how the employer will deal with incidents, complaints and threats of workplace violence.

From this, who will approve and enforce these policies when the person violating the employee is the employer or senior management? A suggestion would be that government have an anonymous avenue for these workers. Many establishments do not want government interference; however, there are times when it is needed.

If a worker does speak out, what sort of vengeance will the worker face? If a worker refuses to work or chooses to take a leave of absence, what will the consequences be upon returning to work? This is where workers require very strong protection from retribution by employers if they come forward with complaints of violence and/or harassment.

This committee should be made aware that regardless of whether an establishment has two workers or 100 workers, the negative effects can be worse in a smaller establishment, because the safeguards are minimal.

Physical violence complaints that could lead to criminal charges can be dealt with through the police department. However, when you have all the workers against one worker, it can be very difficult to prove.

This legislation must include penalties for all employers, senior administrators and companies that fail to enforce the legislation to protect the worker. This must include crown corporations, government offices and/or unions.

Above are my concerns based on the bill. Now, here is my story.

For over 13 years, I was an individual who worked with different government ministries and agencies, offering input, which led to a successful advocacy and paralegal business assisting individuals who were dealing with government red tape. From this, I gained much respect within our community.

In 2007, I secured a position that could lead me to my long-time career goal. For me, life was going as I had planned. Needless to say, months went by and things began to happen at work.

As each day passed, friends, family and loved ones watched me get knocked down. The more I tried to speak out for help, the worse things got. Because of many trips to the doctor's office, I was left with no choice but to quit or go on sick leave.

What would I do? I was a single mother who hadn't applied for her paralegal licence because the plan was to follow in my boss's footsteps. For me, sick leave was my option, hoping that time away would resolve issues, which it did.

I was told not to go back to work by friends and family, for fear of what was awaiting me, for they had already heard from my co-workers that I no longer worked there. Left with few options, I returned and was immediately terminated.

I was devastated and shocked, because my boss was holding out his hand to shake my hand while proceeding to tell me how I was a great employee and how he appreciated everything I had done. I was then escorted out to my car. Imagine how I felt.

I did attempt to exercise my rights through the labour board but was told that because my employer was a crown corporation, there was no protection for me; I could file my matter with the Ontario Human Rights Commission, which I did. My matter is scheduled for mediation this Thursday; however, my former employer is accusing me of a breach of confidentiality for speaking out.

This is what some workers face, and it is a fear tactic that can send anyone overboard. This is where very strong protection from retaliation is needed for workers who attempt to exercise their rights.

After being terminated, I remained in a depressed state for months. I attempted to rebuild my business, but the depression overpowered me. Imagine your children seeing their mother, an individual who could overcome anything, now lying in a bed, giving up and losing everything she had worked so hard for.

Finally, in June 2009, a year to the day after being terminated, I began to overcome this terrible depression. Life for me has greatly improved. However, I no longer have the dream that came with that job, mostly because of what happened and how everything was pushed under the rug.

You see, I did approach my manager, my co-workers, my employer, his wife, local and provincial association members, and even top human resource employees. Everywhere I turned, I was told to keep quiet and say nothing; just do the job. Unfortunately, that silence destroyed me and everything I had worked so hard for—but only temporarily.

With Bill 168, there is no protection for workers such as myself. One can only ask why. Why is it that crown corporations are exempt? Do we as individuals not deserve the same protection as individuals who work in private industry? Where does an individual go when coworkers turn their backs to protect their own position because the intruder is your immediate supervisor or your employer's spouse?

Further, because the spouse does not fall under the definition of employee, again there is no protection for the worker. What does an individual do when the employer chooses to disregard the situation or turn his own

back, ignoring the issues in front of him or her? These are questions that only this panel can answer.

In closing, I would like to leave you all with this: I had a great, positive support system filled with friends, family and loved ones who helped me overcome the negative treatment that destroyed my self-esteem. Imagine if I had no one to lean on. Where would I be?

Do we allow someone else to go through something similar? Do we allow the employer to be exempt, especially when the employer is someone who brings in this sort of legislation? If anything, I believe government members should be held to the highest regard for the fact that government sets the rules for protection of individuals, yet some feel that they are privileged because of the position they hold.

I hope that my submission will be used to protect others from enduring this sort of treatment. Hopefully my story will help someone else from going through what I did

Sincerely submitted by Anna Moscardelli, former special assistant to Bob Bailey, MPP, Sarnia-Lambton. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Moscardelli. We've got less than a minute per side, beginning with Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much for coming forward and sharing your story. Would you agree that

Bill 168 is a step in the right direction to addressing violence and harassment in the workplace?

Ms. Anna Moscardelli: I think it's a step; I don't think it's enough, for the simple fact that, again, if it's a small establishment, there's little that the employee has for protection. It's he-said-she-said, and unless you have a lot of documentation, there's minimal there for you.

Mr. Vic Dhillon: I also just want to clarify that the crown is bound by OSHA. Thank you very much.

The Chair (Mr. Shafiq Qaadri): Ms. Jones?

Ms. Sylvia Jones: Thank you for your presentation, Anna.

Ms. Anna Moscardelli: Thank you.

The Chair (Mr. Shafiq Qaadri): Ms. DiNovo.

Ms. Cheri DiNovo: Just so you know, we're putting forward an amendment to strengthen the whistle-blower part and to cover all provincial workplaces, not just some. Thank you very much.

Ms. Anna Moscardelli: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Moscardelli, for your presence and written deputation.

Just to inform my colleagues, we have clause-byclause hearings on this bill on Monday. The committee is adjourned.

The committee adjourned at 1823.





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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

Monday 30 November 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Lundi 30 novembre 2009

The committee met at 1439 in committee room 1.

OCCUPATIONAL HEALTH AND SAFETY AMENDMENT ACT (VIOLENCE AND HARASSMENT IN THE WORKPLACE), 2009

LOI DE 2009 MODIFIANT LA LOI SUR LA SANTÉ ET LA SÉCURITÉ AU TRAVAIL (VIOLENCE ET HARCÈLEMENT AU TRAVAIL)

Consideration of Bill 168, An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace and other matters / Projet de loi 168, Loi modifiant la Loi sur la santé et la sécurité au travail en ce qui concerne la violence et le harcèlement au travail et d'autres questions.

The Chair (Mr. Shafiq Qaadri): Welcome to clause-by-clause on Bill 168, An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace and other matters. I begin by inviting comments of a general nature, and then we'll proceed to the actual motions and amendments. Any general comments before proceeding? Ms. DiNovo.

Ms. Cheri DiNovo: Yes, just to let the committee know, we in the New Democratic Party, of course—and we've said this from the outset—plan on voting for this bill. Our amendments are by way of our stakeholders, from all the deputants we've heard, just to strengthen the language of the bill. All of our amendments are to that end and they are all on the advice of stakeholders. The Registered Nurses' Association of Ontario and the Ontario Federation of Labour have inspired all of our amendments, just to give you a little bit of background on where we're coming from.

The Chair (Mr. Shafiq Qaadri): Any further comments? I'll take the liberty of standing down the PC amendment. Perhaps we can come back to it should some more members materialize. I'd now invite the NDP to please present motion 1.

Ms. Cheri DiNovo: This particular amendment is from the Registered Nurses' Association of Ontario, which felt very strongly about it. They weren't alone; there were a number of others. We just felt—and again,

we heard this from a number of deputants—that workplace violence was defined poorly in the original bill.

I move that the definition of "workplace violence" in subsection 1(1) of the Occupational Health and Safety Act, as set out in section 1 of the bill, be struck out and the following substituted:

"workplace violence' means any incident in which a person is threatened, abused or assaulted in circumstances related to their work, whether by a customer, co-worker or other person, and regardless of the level at which the worker is employed in an organization, and includes all forms of harassment, bullying, intimidation, physical threats, assault, robbery and other intrusive behaviours."

The Chair (Mr. Shafiq Qaadri): Are there any further comments?

Mr. Vic Dhillon: We won't be supporting this because we believe that there should be a separate definition for workplace harassment, as it's different than workplace violence. Including harassment and bullying in the definition of workplace violence would be inconsistent with the separate approach to workplace harassment and workplace violence that is taken in the bill, and it would also make redundant the proposed bill's required provision of the employer's workplace harassment policy and program. So we won't be supporting this.

Ms. Cheri DiNovo: Excuse me, Mr. Chair. I couldn't hear some of what he was saying, so I didn't hear the explanation.

The Chair (Mr. Shafiq Qaadri): Mr. Dhillon, we would invite you to speak to be heard.

Mr. Vic Dhillon: Sure. I'll repeat what I said. We won't be supporting this because we believe that there should be a separate definition for workplace harassment, as it is different from workplace violence. Including harassment and bullying in the definition of workplace violence would be inconsistent with the separate approach to workplace harassment and workplace violence that is taken in this bill. This amendment would also make redundant the proposed bill's required provisions for the employer's workplace harassment policy and program.

The Chair (Mr. Shafiq Qaadri): Any further comments before we proceed to the vote? Seeing none, we'll proceed to the vote. Those in favour of NDP motion 1? Those opposed? I declare NDP motion 1 to have been defeated.

NDP motion 2: Ms. DiNovo.

Ms. Cheri DiNovo: Again, inspired by our stake-holders, and I have to say that every single one of the deputants wanted this. This is complementary, as we shall see, to our amendment number 3 that is coming up.

I might draw the attention of the government side back to the case of Lori Dupont and Theresa Vince, particularly Lori Dupont and others, where the person might not be a worker in that particular—

The Chair (Mr. Shafiq Qaadri): Ms. DiNovo, just for protocol purposes, I'd invite you to read the motion, and then you're welcome to make any comments after.

Ms. Cheri DiNovo: Sure. Not a problem.

I move that the definition of "workplace violence" in subsection 1(1) of the Occupational Health and Safely Act, as set out in section 1 of the bill, be struck out and the following substituted:

"workplace violence' means,

"(a) the exercise of physical force by a person against another person in a workplace that causes or could cause physical injury to the other person,

"(b) an attempt to exercise physical force against a person in a workplace that could cause physical injury to the person. ('violence au travail')"

I'd just point out that it substitutes the word "worker" as described by our stakeholders.

The Chair (Mr. Shafiq Qaadri): You have the floor for any comments.

Ms. Cheri DiNovo: That's it.

The Chair (Mr. Shafiq Qaadri): Any further comment? Mr. Dhillon?

Mr. Vic Dhillon: We won't be supporting this. The purpose of the Occupational Health and Safety Act is to protect workers' health and safety on the job. We're not in favour of removing the reference to a worker as this is not consistent with the Occupational Health and Safety Act. It is important that the committee recognize that the language in the bill would provide protection to a nurse, for example, when dealing with two patients who would be fighting.

The Chair (Mr. Shafiq Qaadri): If there are no further comments—Ms. DiNovo?

Ms. Cheri DiNovo: Yes. Again, there was some real concern with folk that exactly the situation that's described by Mr. Dhillon might result in harm to a worker, particularly a nurse. So in a sense it's exactly the situation he described that would warrant this amendment, but suffice to say.

The Chair (Mr. Shafiq Qaadri): If there are no further comments, we'll proceed to the vote. Those in favour of NDP motion 2? Those opposed? NDP motion 2 is defeated.

NDP motion 3.

Ms. Cheri DiNovo: I move that the definition of "workplace violence" in subsection 1(1) of the Occupational Health and Safety Act, as set out in section 1 of the bill, be amended by adding the following clause:

"(c) engaging in a course of vexatious comment or conduct against a worker in a workplace that provides reasonable grounds to believe it will cause or could cause physical injury to that worker or any other worker."

The Chair (Mr. Shafiq Qaadri): Debate, comments? 1450

Ms. Cheri DiNovo: Yes. Again, I want to point out, this was an amendment supported by the Ontario Federation of Labour, the Ontario Nurses' Association, OPSEU and many others, for the reasons I've already outlined.

The Chair (Mr. Shafiq Qaadri): Further comments? Mr. Dhillon.

Mr. Vic Dhillon: We won't be supporting this because we have an upcoming motion, number 5, which will address the issues raised in this motion.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote. This in favour of NDP motion 3? Those opposed? Motion 3 is defeated.

NDP motion 4: Ms. DiNovo.

Ms. Cheri DiNovo: I move that the definition of "workplace violence" in subsection 1(1) of the Occupational Health and Safety Act, as set out in section 1 of the bill, be amended by adding the following clauses:

"(c) the endangerment of the physical or psychological

health or safety of a worker,

"(d) any threatening statement or behaviour that gives a person reasonable cause to believe that he or she is at risk of physical injury."

The Chair (Mr. Shafiq Qaadri): Comments?

Ms. Cheri DiNovo: Yes. The Inquest Action Group in particular, coming out of the Lori Dupont case—her family and supporters really wanted this amendment. That's why we brought it forward on their behalf.

The Chair (Mr. Shafiq Qaadri): Mr. Dhillon.

Mr. Vic Dhillon: Again, Chair, we won't be supporting this. This bill deals with situations where there is psychological harassment with threats of physical harm. The government has an upcoming motion, number 5, that responds to the issue raised in clause (d) in this motion, which involves threatening statements that lead to physical violence.

The Chair (Mr. Shafiq Qaadri): If there are no further comments, we'll proceed to the vote. Those in favour of NDP motion 4? Those opposed? Motion 4 is defeated.

With the committee's permission, I'll invite Ms. Jones—if you're ready—to present PC motion 0.1.

Ms. Sylvia Jones: I move that the definition of "workplace harassment" in subsection 1(1) of the Occupational Health and Safety Act, as set out in section 1 of the bill, be struck out and the following substituted:

"workplace harassment' means engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome, including,

"(a) repeatedly following the worker from place to place,

"(b) repeatedly communicating with the worker, either directly or indirectly,

"(c) besetting or watching the place where the worker works or happens to be, or

"(d) engaging in threatening conduct directed at the worker."

The Chair (Mr. Shafiq Qaadri): Further comments? Ms. DiNovo.

Ms. Cheri DiNovo: I just wanted to give the New Democratic Party's reasons for not supporting this amendment. Again, this is a narrowing down of the definition of what we're trying to do. In fact, our amendments broaden out what the government has already done. So we will not be supporting this amendment.

The Chair (Mr. Shafiq Qaadri): Any further comments? Mr. Dhillon.

Mr. Vic Dhillon: We won't be supporting this, as the opposition has proposed limiting the definition for harassment by proposing subsections (a) to (c), which focus on stalking behaviours.

The definition in Bill 168 is based on the Human Rights Code and provides a broader approach. The government does not support limiting the definition of harassment.

The government has an upcoming motion, number 5, to amend the definition of workplace violence that would address the behaviour described in clause (d).

The Chair (Mr. Shafiq Qaadri): If there are no further comments, we'll proceed to the vote. Those in favour of PC motion 0.1? Those opposed? PC motion 0.1 is defeated.

Government motion 5: Mr. Dhillon.

Mr. Vic Dhillon: I move that the definition of "workplace violence" in subsection 1(1) of the act, as set out in section 1 of the bill, be struck out and the following substituted:

"workplace violence' means,

"(a) the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,

"(b) an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker.

"(c) a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker. ('violence au travail')"

The reason for this motion is that we've heard the concerns of stakeholders that the definition of workplace violence needed to include threatening statements that could lead to physical injury to the worker. That's why this amendment would clarify that "workplace violence" includes a threatening statement or behaviour that could lead to the exercise of physical force against a worker in a workplace.

The Chair (Mr. Shafiq Qaadri): Comments? Ms. DiNovo.

Ms. Cheri DiNovo: I'm wondering, Mr. Chair, if this is the appropriate time to suggest an amendment to this government motion.

The Chair (Mr. Shafiq Qaadri): The floor is yours to do so.

Ms. Cheri DiNovo: I tabled this amendment with the clerk.

I move that the definition of "workplace violence"— I'm just rereading the entire government amendment—in subsection 1(1) of the Occupational Health and Safety Act, as set out in the government motion to strike out and replace that definition, be amended by striking out clause (c) and substituting the following:

"(c) a statement or behaviour"—and here's the change, if the government's listening—"or a series of statements or behaviours that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker."

So instead of just "a statement or behaviour," it's "a series of statements or behaviours."

The Chair (Mr. Shafiq Qaadri): I'll ask members of the committee: Do you need a written copy of the amendment before we vote?

Ms. Cheri DiNovo: Could I speak to the amendment, too?

The Chair (Mr. Shafiq Qaadri): In a moment.

If you do, I need to recess for that process.

Mr. Vic Dhillon: Yes, Mr. Chair.

The Chair (Mr. Shafiq Qaadri): Fine. If it's all right with you, I'd like to recess in order to copy. So the committee is recessed for a few minutes.

The committee recessed from 1452 to 1457.

The Chair (Mr. Shafiq Qaadri): Thank you. Now that all committee members have copies of the NDP motion amendment, the floor is open for any comments. Ms. DiNovo?

Ms. Cheri DiNovo: I just draw the committee's attention and that of those who are here from the ministry back to the cases that I think actually engendered all of this, and those are Theresa Vince and Lori Dupont. One behaviour might be considered reasonable: the example, of a woman who is a TTC driver and her abusive ex is sitting in the chair next to her on one trip. Well, one trip might be considered conceivably reasonable, but where it becomes really unreasonable and where it really becomes a red flag for those who know the chain of events that led to Lori's death, for example, or Theresa Vince's death, is when it's a series of behaviours, repeated. So one asking out on a date, well, is that reasonable? It's a series of behaviours

This is a very small step that the government is making here. As a nod to the vast majority of our deputants, we'd just like, if we have to make do with this—and as you know from my other amendments, we would have liked to see this language much stronger. But if we have to make do with this, at least this will perhaps prevent deaths like those of Lori Dupont or Theresa Vince. Without that amendment, I don't think this bill would prevent a Lori Dupont or Theresa Vince death, because the behaviours exerted and epitomized by both of their assailants were, if you took any snapshot of one

of those behaviours, reasonable, or could be deemed reasonable. So we don't want that to happen. We want to catch this kind of behaviour before it becomes violent and ends in death.

The Chair (Mr. Shafiq Qaadri): Any further comments on the NDP amendment?

Mr. Vic Dhillon: Mr. Chair, I'd like to invite legal counsel to provide some comments.

The Chair (Mr. Shafiq Qaadri): Welcome. Please come forward and identify yourselves, and the floor is yours.

Ms. Kathleen Therriault: Hello. My name is Kathleen Therriault. I'm with the Ministry of Labour.

I would just like to clarify that subclauses (a) and (b) are written in the singular, and so subclause (c) is drafted to maintain consistency with that approach. I'd also like to add that the singular would cover off the last of a series of incidents, where it was at the point at which someone felt that they would be subject to physical harm in the workplace. So the singular would include the plural, is what I'm trying to say, on a policy basis.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Ms. Cheri DiNovo: Yes. Again, it's not my voice alone that is really bringing this forward; it's the voices of the deputants, who are very concerned about what they saw as the language being too weak to, again, prevent the tragedies that were the lives and deaths of Lori Dupont and Theresa Vince. They wanted to capture it.

I understand what you're saying, but I don't think consistency in language is enough of an argument, from our standpoint, to argue for the series of statements or behaviours. Again, I could easily see that a one-time behaviour could be seen as reasonable—and remember, this is a worker who has to defend her actions to refuse work, or whatever she's going to do, to a manager. So we're trying to aid her in protecting herself. If it's just one statement or behaviour, well, it's the last of a series, but nowhere in here does it say that there's a series.

What I'm getting at is that stalking behaviour is never a one-time incident. Stalking behaviour is a series of incidents, escalating. As you know, in the Lori Dupont case, it was 44 different times. Any one of those times might have been deemed reasonable by an employer, whereas for the employee, in that case Lori, it was not reasonable because of the series, because of the pattern effect.

Again, if it doesn't make that much difference, I don't see why the government wouldn't add this in to satisfy the families of Theresa Vince and Lori Dupont, and stakeholders like the Ontario Federation of Labour and the Registered Nurses' Association of Ontario. If it's not that big a thing, why don't we add it in just to be sure, just to be safe?

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. DiNovo. Are there further comments?

Mr. Vic Dhillon: I just want to reinforce that the definition would cover more than one scenario, one behaviour or one statement, so we don't feel that this

amendment would clarify, and therefore it would not be necessary.

The Chair (Mr. Shafiq Qaadri): Thank you. Please.

Mr. David Halporn: Hi. I'm David Halporn, counsel with the Ministry of Labour. I've just been asked to add that, as a legal matter, the singular would include the plural, absent evidence to the contrary. I'm sure our esteemed legislative counsel could confirm that if necessary.

Ms. Cornelia Schuh: It's correct that the Legislation Act, the interpretation part of that, provides that the singular includes the plural and the plural includes the singular in the absence of an intention to the contrary. So you have to look at the context, but I don't think you would see here any intention to the contrary.

The Chair (Mr. Shafiq Qaadri): Thank you. Any further comments?

Seeing none, we'll proceed to the vote on the amendment to the amendment. The amendment to the amendment is by the NDP. Those in favour of that? Those opposed? I declare the amendment to the amendment defeated.

We'll now proceed to the anterior amendment, which is government motion 5. Are there any further comments on government motion 5?

Seeing none, we'll proceed to the vote of that. Those in favour of government motion 5? Those opposed? Motion 5 is carried.

Shall section 1, as amended, carry? Carried.

We'll proceed to the vote on section 2, as we've received no amendments to date. Shall section 2 carry? Carried.

We'll proceed now to section 3. Thanks to legal counsel and the ministry folks who just testified there.

Section 3, NDP motion 6: Ms. DiNovo.

Ms. Cheri DiNovo: I move that section 32.0.1 of the Occupational Health and Safety Act, as set out in section 3 of the bill, be amended by adding the following subsection:

"Consultation

"(1.1) The employer shall prepare and review policies under subsection (1) in consultation with, and shall consider the recommendations of, the joint health and safety committee or health and safety representative."

The Chair (Mr. Shafiq Qaadri): Any further comments? Ms. DiNovo.

Ms. Cheri DiNovo: I want to draw the government's attention to this, because this is extremely serious and really baffled and upset our stakeholders, including the Dupont and Vince families. This, in effect, de facto, would make workplace violence the only behaviour that's exempt from the requirement to check with joint health and safety committees or health and safety representatives. It singles it out as a behaviour that they shouldn't have to consult on, whereas all other behaviours should be consulted on with the joint health and safety committee or health and safety representative. We feel it's very, very important in this amendment that they must consult, especially on issues of potential violence,

with those who are entrusted to represent the employees, of course, and the government, in a sense, and the Occupational Health and Safety Act on this.

Rather than exempt workplace violence as the one behaviour that doesn't have to be discussed, we think very much that workplace violence needs to be part of the conversations had with management and the joint health and safety committee or health and safety representative.

The Chair (Mr. Shafiq Qaadri): Any further comments on NDP motion 6?

Mr. Vic Dhillon: We will not be supporting this motion, as section 32.0.1 in the bill is consistent with the Occupational Health and Safety Act in the role that it gives the joint health and safety committee or health and safety representative. It is consistent with other health and safety issues in the workplace.

In addition, under the Occupational Health and Safety Act, the joint health and safety committee or health and safety representative has the power to make recommendations to the employer for the improvement of the health and safety of workers.

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The Chair (Mr. Shafiq Qaadri): Any further comments?

Ms. Cheri DiNovo: Then why does it not state that? Again, stakeholders were extremely concerned that—and I think this is, notwithstanding the government's concern, inadvertent. I don't think it's a purposeful omission here on the government's part, but it is an exemption, an omission. So that is not only our concern but stakeholders' real concern about this, that inadvertently it causes an omission, an exemption, to workplace violence under the act.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Mr. Vic Dhillon: I would request that we call up legal counsel just to clear up a policy matter.

The Chair (Mr. Shafiq Qaadri): Legal counsel, the floor is yours.

Interjection: Policy.

The Chair (Mr. Shafiq Qaadri): Policy and associated entourage. As you wish.

Mr. Vic Dhillon: A policy adviser from the ministry.

Ms. Kathleen Therriault: Hello. It's Kathleen Therriault for the Ministry of Labour.

I'd just like to indicate that the Occupational Health and Safety Act does not assign a specific role for joint health and safety committees in the development of the occupational health and safety policy and program. Likewise, the proposed amendments in Bill 168 would not assign it a specific role for the development of the workplace violence and harassment policies and programs.

The Chair (Mr. Shafiq Qaadri): Thank you. Are

there further comments?

Ms. Cheri DiNovo: Well, simply, notwithstanding the fact that I think fewer than half of workplaces have a joint health and safety committee or a health and safety

representative, it's my understanding that they're still encouraged to have them.

In essence, the next few motions that we're going to bring forward really put the onus on the government to work with the employees and their committees that are struck to represent their interests rather than simply unilaterally taking action in any way, shape or form. Again, that has been the tradition of working with joint health and safety committees. We just want to make sure that that's absolutely the intent of this bill.

Again, if we're not looking for the exemptions or the problems here, others will be. Agents and employers will be looking for those exemptions and omissions. Again, we just want to make it very clear that these bodies be consulted.

The Chair (Mr. Shafiq Qaadri): Are there any further comments?

Seeing none, we'll proceed to the vote on NDP motion 6. Those in favour? Those opposed? NDP motion 6 is defeated.

NDP motion 7.

Ms. Cheri DiNovo: I move that section 32.0.1 of the Occupational Health and Safety Act, as set out in section 3 of the bill, be amended by adding the following subsection:

"Contents

"(1.2) Without limiting the generality of subsection (1), the policies prepared with respect to workplace violence and workplace harassment must include internal procedures to manage the disclosure of information."

The Chair (Mr. Shafiq Qaadri): Further comments or debate?

Ms. Cheri DiNovo: Again, better protection for whistle-blowers; that's what this amendment brings in. We want to be very specific that whistle-blowers will be protected, and again, not targeted by management or their—frighteningly enough—potential abusers.

The Chair (Mr. Shafiq Qaadri): Comments?

Mr. Vic Dhillon: We won't be supporting this. The occupational health and safety policy, as conceived under the Occupational Health and Safety Act, reflects on a high-level commitment to workplace health and safety by the highest levels of management. The policies with respect to workplace violence and workplace harassment in this bill would be analogous.

Specific procedures such as those put forward in this amendment would be more appropriate as a component of the program that implements the policy, so we will not be in favour of this motion.

The Chair (Mr. Shafiq Qaadri): Ms. DiNovo.

Ms. Cheri DiNovo: Yes. Again, I just want to really state our adamant support of this amendment and the adamant concern that Bill 168, as currently written, does not protect whistle-blowers enough and hence, again, does not satisfy those folk who came and deputed on behalf of the Vince and Dupont families and all of our stakeholders to really protect workers who have go to management or go to the Ministry of Labour with

complaints about workplace safety. So, again, just for the record.

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll proceed to the vote. Those in favour of NDP motion 7? Those opposed? NDP motion 7 is defeated.

NDP motion 8.

Ms. Cheri DiNovo: I move that subsection 32.0.1(2) of the Occupational Health and Safety Act, as set out in section 3 of the bill, be struck out and the following substituted:

"Written form, posting

"(2) The policies shall be posted at a conspicuous place in the workplace and shall be given to every person hired to work at the workplace within one week after beginning work."

The Chair (Mr. Shafiq Qaadri): Comments?

Ms. Cheri DiNovo: Yes. I know that the government's going to point to their motion or amendment 26. We don't feel that that has strong enough language. It's "may" language rather than "should." It's rooted in an inspector rather than in management. We want more direct language here for the very simple reason that an employee does not know their rights unless they are given those rights, whether it's in written form or whether it's posted. So, if it's not posted and it's never delivered to you, how do you know you have them? How does a new employee know how she is covered under this act if she's not told and told, pretty specifically and directly, pretty early on in her employment with her employer?

The Chair (Mr. Shafiq Qaadri): Comments?

Mr. Vic Dhillon: Again, we will not be supporting this. This bill already requires the employer to provide a worker with information and instruction on the contents of the policies in subsection 32.0.5(2) and section 32.0.7. The bill already requires the employer to post the policies with respect to workplace violence and workplace harassment in a conspicuous place in the workplace as required under subsection 32.0.1(2).

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Dhillon. Are there any further comments?

Seeing none, we'll proceed to the vote. Those in favour of NDP motion 8? Those opposed? NDP motion 8 is defeated.

Ms. DiNovo, NDP motion 9.

Ms. Cheri DiNovo: I move that section 32.0.2 of the Occupational Health and Safety Act, as set out in section 3 of the bill, be amended by adding the following subsection:

"Consultation

"(1.1) The employer shall develop and maintain the program in consultation with, and shall consider the recommendations of, the joint health and safety committee or health and safety representative."

This follows from our other amendment. It's a sister amendment and obligates the employer to work with those who represent both this ministry and this act and the employees, and without being very direct about this,

we don't see the necessity for employers to do that in the bill.

The Chair (Mr. Shafiq Qaadri): Further comments on NDP motion 9?

Mr. Vic Dhillon: Chair, we will not be supporting this. As we mentioned in proposed motion 6, section 32.0.2 in the bill is consistent with the Occupational Health and Safety Act and the role that it gives the joint health and safety committee or health and safety representative, which is consistent with other health and safety issues.

As well, under the Occupational Health and Safety Act, the joint health and safety committee or health and safety representative has the power to make recommendations to the employer for the improvement of the health and safety of workers.

The Chair (Mr. Shafiq Qaadri): Any further comments before we proceed to the vote?

Seeing none, we'll proceed to NDP motion 9. Those in favour? Those opposed? NDP motion 9 is defeated.

NDP motion 10.

Ms. Cheri DiNovo: I move that clause 32.0.2(2)(a) of the Occupational Health and Safety Act, as set out in section 3 of the bill, be amended by striking out "procedures to control the risks" and substituting "procedures to eliminate or, if that is not possible, to control the risks."

The Chair (Mr. Shafiq Qaadri): Comments on NDP motion 10? Mr. Dhillon?

Mr. Vic Dhillon: Yes, Chair. Clause 32.0.2(2)(a), as currently drafted, is consistent with the existing employer duty in the Occupational Health and Safety Act to take every precaution reasonable in the circumstances to protect workers. We will not be in support of this.

Ms. Cheri DiNovo: Mr. Chair?

The Chair (Mr. Shafiq Qaadri): Yes, Ms. DiNovo.

Ms. Cheri DiNovo: Thank you. We feel very strongly, and so do the families, again, of Theresa Vince and Lori Dupont. This would not have saved their lives, the way this bill is written right now, with this.

Surely the intent of management should be to eliminate the risks to their employees, their female employees, of violence in the workplace. It's not enough to control the risk. What would that look like, in the case of Theresa Vince or of Lori Dupont? Obviously, it's the intent of all of us in this room, and in every room, to eliminate the risk to our employees.

Really, this is not asking a great deal of the government, simply to state what should be everybody's intent, which is to eliminate the risks to our workers. Controlling the risks, allowing violent people on staff to continue to be on staff—is that controlling the risk? The language here is extremely important. Again, I would strongly urge the government to vote for this amendment.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll proceed to the vote. Those in favour of NDP motion 10? Those opposed? I declare NDP motion 10 to have been defeated.

I now invite Mr. Dhillon to present government motion 11.

Mr. Vic Dhillon: Certainly, Chair.

I move that clauses 32.0.2(2)(b), (c) and (d) of the act, as set out in section 3 of the bill, be struck out and the following substituted:

"(b) include measures and procedures for summoning immediate assistance when workplace violence occurs or

is likely to occur;

"(c) include measures and procedures for workers to report incidents of workplace violence to the employer or supervisor;

"(d) set out how the employer will investigate and deal with incidents or complaints of workplace violence;

and."

The reason for this motion is that the earlier government motion, number 5, to change the definition of workplace violence to include threatening statements or behaviour makes the word "threat" in these provisions redundant. The reference to workplace violence covers the situation of when a threat of workplace violence is made.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. DiNovo.

Ms. Cheri DiNovo: I was looking forward to the government's explanation, because we were extremely concerned, as were the stakeholders, that you're eliminating the language in this section of threats of workplace violence. It seems to be a weakening of the language in this section.

Again, threats are a critical part of one of those steps, 44 of which led to Lori's death. Any language that strengthens rather than weakens—this "immediate assistance when workplace violence occurs or is likely to occur" is very different, it seems to me, than threats of workplace violence occurring. The threats come before the workplace violence.

That was our concern. I am afraid I haven't heard anything from the government side to allay that concern. If there's further explanation, we're happy to hear it. Otherwise, we will be voting against this.

The Chair (Mr. Shafiq Qaadri): Thank you. Further

comments? Mr. Dhillon.

Mr. Vic Dhillon: Yes, Chair. I just wanted to reiterate that, again, the amendment definition includes threats. So we'll be voting in favour of this.

The Chair (Mr. Shafiq Qaadri): Thank you. Are there further comments?

Seeing none, we'll proceed to the vote. Those in favour of government motion 11? Those opposed? I declare government motion 11 to have carried.

Government motion 12: Mr. Dhillon.

Mr. Vic Dhillon: I move that subsection 32.0.3(1) of the act, as set out in section 3 of the bill, be struck out and the following substituted:

"Assessment of risks of violence

"(1) An employer shall assess the risks of workplace violence that may arise from the nature of the workplace, the type of work or the conditions of work."

Our reasoning is that this amendment would clarify that employers shall assess all the risks associated with the hazard of workplace violence. This amendment is to address stakeholder concerns that were raised that there may be more than one risk associated with the hazard of workplace violence.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments? Ms. DiNovo.

Ms. Cheri DiNovo: We think this is a good amendment and we're going to support it. We think the change from "risk" to "risks" is a strengthening of the language that will help victims.

The Chair (Mr. Shafiq Qaadri): If there are no further comments: Those in favour of government motion 12? Those opposed? Government motion 12 is carried.

NDP motion 13: Ms. DiNovo.

Ms. Cheri DiNovo: I move that clause 32.0.3(3)(a) of the Occupational Health and Safety Act, as set out in section 3 of the bill, be amended by striking out "provide a copy if the assessment is in writing" and substituting "provide a copy of the assessment in writing."

Again, this refers to government motion 26. It's a stronger and more direct way of saying what we think the bill should be saying. In fact, concern that management not have an obligation to provide a risk assessment in writing—we think management definitely should provide a risk assessment in writing.

The Chair (Mr. Shafiq Qaadri): Further comments on NDP motion 13? Mr. Dhillon.

Mr. Vic Dhillon: We have an upcoming motion, motion number 26, which addresses the issues raised.

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote. Those in favour of NDP motion 13? Those opposed? NDP motion 13 is defeated.

NDP motion 14: Ms. DiNovo.

Ms. Cheri DiNovo: I move that clause 32.0.3(3)(b) of the Occupational Health and Safety Act, as set out in section 3 of the bill, be amended by striking out "advise the workers of the results of the assessment and, if the assessment is in writing, provide copies on request or advise the workers how to obtain copies" at the end and substituting "advise the workers of the results of the assessment in writing and provide written copies of the assessment on request or advise the workers how to obtain written copies."

Again, it's alerting workers to the policies that are in place. We think the language needs to be strong enough to encourage management to do just that, and there shouldn't be any wiggle room here in terms of management providing this to workers.

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll proceed to the vote. Those in favour in NDP motion 14? Those opposed? NDP motion 14 is defeated.

Government motion 15: Mr. Dhillon.

Mr. Vic Dhillon: I move that subsection 32.0.3(4) of the act, as set out in section 3 of the bill, be amended by striking out "the risk of workplace violence" and substituting "the risks of workplace violence."

This is a consequential amendment that would provide consistency with motion number 12 to refer to the risks of workplace violence rather than the risk of workplace violence.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. DiNovo?

Ms. Cheri DiNovo: We're in favour, for the same reasons we were in favour of the other amendment that pluralized "risk."

The Chair (Mr. Shafiq Qaadri): We'll proceed to the vote—yes, Ms. Jones?

Ms. Sylvia Jones: I have a question for the PA. Why are we adding the plurals here and yet we were not willing to do that for the NDP motion previously?

Mr. Vic Dhillon: Chair, may I, with your permission, ask the policy—

The Chair (Mr. Shafiq Qaadri): We would be delighted. Policy folks, welcome.

Mr. Vic Dhillon: Can we have a five-minute recess, Chair?

The Chair (Mr. Shafiq Qaadri): If that's suitable to the committee, a five-minute recess.

The committee recessed from 1524 to 1527.

The Chair (Mr. Shafiq Qaadri): We reconvene. The floor is yours.

Ms. Kathleen Therriault: It's Kathleen Therriault for the Ministry of Labour. I'd just like to state, in response to the question, that the pluralization proposed in the amendment to government motion 5 would not have provided any additional clarity around the intent of that section, whereas the pluralization in this proposed motion is something that would have clarified that employers will be required to assess all risks and not just one risk with respect to workplace violence.

The Chair (Mr. Shafiq Qaadri): Ms. DiNovo.

Ms. Cheri DiNovo: I found the Progressive Conservative speaking point very interesting, and she's absolutely right. Why plural in one case and not in another? But I guess this is indicative of a government that is going to be voting down, by the looks of it, 20 different NDP amendments to strengthen this bill on behalf of the families who are victims of violence and the stakeholders who actually work in the workplaces that are beset by violence. Really, it's not about policy, not about the bill and strengthening the bill; it's simply that it's the government's way or it's the highway. That's a very clearcut indication: plural in one and not in the other because the government says so—end of story.

The Chair (Mr. Shafiq Qaadri): Are there any further comments?

Seeing none, we'll proceed to the vote. Thank you to the policy folks. Those in favour of government motion 15? Those opposed? Government motion 15 carries.

NDP motion 16.

Ms. Cheri DiNovo: Although it may be a waste of breath, as have all the other motions been at this point, I move that section 32.0.4 of the Occupational Health and Safety Act, as set out in section 3 of the bill, be amended by striking out "the employer shall take every precaution

reasonable in the circumstances" and substituting "the employer shall take a proactive approach."

It hardly needs an explanation, but I'll give one.

The Chair (Mr. Shafiq Qaadri): You're welcome to.

Ms. Cheri DiNovo: Again, in the eye of the beholder, you're leaving this in. The management has to take every precaution reasonable. What does that mean? Again, that leaves it up to the employer to define what's reasonable. What we're saying is on the side of the employee, which is that the employer shall take a proactive approach—in other words, not a reactionary approach but a proactive approach—to the possibility of workplace violence, which is so critical where you've got stalking behaviours leading to violence leading to death.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Mr. Vic Dhillon: Yes, Chair. The government opposes this motion and has covered it off in the definition where an employer knows or ought to know and would have an obligation to act in the situation.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Seeing none, we'll now proceed to the vote. Those in favour of NDP motion 16? Those opposed? I declare NDP motion 16 to be defeated.

NDP motion 17.

Ms. Cheri DiNovo: I move that subsection 32.0.5(1) of the Occupational Health and Safety Act, as set out in section 3 of the bill, be amended by striking out "workplace violence" at the end and substituting "workplace violence and workplace harassment."

The Chair (Mr. Shafiq Qaadri): Comments?

Ms. Cheri DiNovo: Yes. Clearly, we have been, from the beginning, and so have all the deputants, concerned that "workplace violence" does not describe all of the behaviours that lead to the death of employees such as Lori Dupont and Theresa Vince. That's why we need "workplace violence and workplace harassment," as the government seems to want to do in some small way themselves. So we don't understand why, in this section of the bill, harassment is not mentioned as well.

The Chair (Mr. Shafiq Qaadri): Mr. Dhillon?

Mr. Vic Dhillon: The government believes that workplace harassment needs to be dealt with separately from violence as there are unique protections for each. Adding "workplace harassment" to this section would be inconsistent with the separate approach to workplace harassment and workplace violence that is taken in this bill.

The Chair (Mr. Shafiq Qaadri): Further comments?

Seeing none, we'll proceed to the vote. NDP motion 17: Those in favour? Those opposed? NDP motion 17 is defeated.

NDP motion 18: Ms. DiNovo.

Ms. Cheri DiNovo: I move that subsection 32.0.5(2) of the Occupational Health and Safety Act, as set out in section 3 of the bill, be amended by,

(a) striking out "information and instruction" at the beginning of clause (a) and substituting "information, instruction, training and education"; and

(b) striking out "information or instruction" at the end of clause (b) and substituting "information, instruction, training or education."

The Chair (Mr. Shafiq Qaadri): Further comments?

Ms. Cheri DiNovo: Yes. The Ontario Federation of Labour really wanted this, and so did many other stakeholders. They felt that this language strengthened the act, and they say this out of years of collective experience. We bow to their superior wisdom.

The Chair (Mr. Shafiq Qaadri): Mr. Dhillon, com-

ments?

Mr. Vic Dhillon: Adding the term "training and education" would be inconsistent with the existing employer duty under the Occupational Health and Safety Act to provide information, instruction and supervision to a worker on health and safety issues.

The Chair (Mr. Shafiq Qaadri): Further comments?

We'll proceed to the vote-oh, Ms. DiNovo?

Ms. Cheri DiNovo: I just wanted to comment on the use of consistent language, which the government has raised as an objection to many NDP amendments here. It speaks to the deficiencies in the Occupational Health and Safety Act, quite frankly. What we're trying to do is strengthen it. We have an opportunity here to strengthen the language in the Occupational Health and Safety Act, and this is an opportunity missed because we're adding something to it with Bill 168. So I don't really accept, and neither do our stakeholders, the fact that "consistency" is a good explanation. Just because it's consistent with poor language doesn't mean it's a reasonable reaction to a viable amendment put forward by stakeholders. So, just for the record.

The Chair (Mr. Shafiq Qaadri): If there are no comments, we'll proceed to the vote. Those in favour of NDP motion 18? Those opposed? NDP motion 18 is

defeated.

NDP motion 19: Ms. DiNovo.

Ms. Cheri DiNovo: I move that section 32.0.5 of the Occupational Health and Safety Act, as set out in section 3 of the bill, be amended by adding the following subsection:

"Consultation

"(1.1) The employer shall provide the information in consultation with, and shall consider the recommendations of, the joint health and safety committee or health and safety representative."

The Chair (Mr. Shafiq Qaadri): Further comments?

Ms. Cheri DiNovo: Yes. This is consistent with our other proposed amendments that have been voted down one and all by this government, which clearly is not in favour of making this bill as strong as it can be but in favour of making this bill as weak as it can be. What we want here is to encourage management to do the right thing, and that is to consult with joint health and safety committees and health and safety representatives, i.e., the representatives of this government, this bill and em-

ployees. I'm waiting for the word "consistency." So fire away.

SP-1013

The Chair (Mr. Shafiq Qaadri): Mr. Dhillon?

Mr. Vic Dhillon: Section 32.0.5 in the bill is consistent with the Occupational Health and Safety Act and the role that it gives the joint health and safety committee or health and safety representative on other health and safety matters. In addition, under the Occupational Health and Safety Act, the joint health and safety committee or health and safety representative has the power to make recommendations to the employer for the improvement of the health and safety of workers.

The Chair (Mr. Shafiq Qaadri): Comments? We'll proceed to the vote, then. Those in favour of NDP motion 19? Those opposed? NDP motion 19 is defeated.

NDP motion 20: Ms. DiNovo.

Ms. Cheri DiNovo: I move that section 3 of the bill be amended by adding the following section to the Occupational Health and Safety Act:

"Disclosure of information

"32.0.8(1) A worker may disclose to his or her supervisor or to the coordinator designated for the purpose by the employer any information that the worker believes could show that workplace harassment or workplace violence has occurred or is about to occur.

"Duties of employer

"(2) Every employer shall,

"(a) protect the identity of persons involved in the disclosure process, including persons making disclosures, witnesses and persons alleged to be responsible for workplace harassment or workplace violence; and

"(b) establish procedures to ensure the confidentiality of information collected in relation to disclosures of workplace harassment and workplace violence.

"Prohibition against reprisal

"(3) No person shall take any reprisal against a person or direct that any reprisal be taken against a person as a result of a disclosure under this act."

The Chair (Mr. Shafiq Qaadri): Any further comments? Ms. DiNovo?

Ms. Cheri DiNovo: Yes. The Registered Nurses' Association of Ontario specifically wanted this amendment, but so did many of the other stakeholders. There's simply inadequate protection under Bill 168, as it stands, for whistle-blowers.

I look at the case of Theresa Vince, where she was working for her abuser, her manager, where the manager had no—anybody else who whistleblew could be fired or could be moved because they were in a position as an underling to this manager, who was the source of the abuse. This makes for a very dangerous work environment. You need whistle-blower protection, otherwise this law is toothless.

The Chair (Mr. Shafiq Qaadri): Further comments? Mr. Dhillon?

Mr. Vic Dhillon: There's nothing in the bill or the Occupational Health and Safety Act that would restrict workers from disclosing information to show that workplace harassment or workplace violence has occurred or

is about to occur. Section 50 of the Occupational Health and Safety Act already provides reprisal protection for workers.

The Chair (Mr. Shafiq Qaadri): Are there no further comments? Ms. Jones?

Ms. Sylvia Jones: Can the parliamentary assistant explain to me why, then, the RNAO has raised this as a concern? Clearly they do not believe that it is sufficient.

The Chair (Mr. Shafiq Qaadri): For the committee, I would invite a reply.

Mr. Vic Dhillon: Yes, Chair. Can we break for about a minute or so?

The Chair (Mr. Shafiq Qaadri): If that is suitable for the committee, we will have a break of a minute or so.

The committee recessed from 1539 to 1540.

The Chair (Mr. Shafiq Qaadri): Finally we resume. Mr. Dhillon, the floor is yours.

Mr. Vic Dhillon: I'd like to request our policy adviser to speak on this, please.

Ms. Kathleen Therriault: It's Kathleen Therriault for the Ministry of Labour.

I would just like to add that subsection (3) of this proposed amendment would, in effect, expand the existing prohibition of reprisals in the Occupational Health and Safety Act, and this kind of proposal would require separate and adequate consideration on its own.

The Chair (Mr. Shafiq Qaadri): Are there any further comments or questions before we proceed to the vote on NDP motion 20? Ms. DiNovo.

Ms. Cheri DiNovo: Yes. Suffice it to say that the Registered Nurses' Association of Ontario-I'm going to answer the question—feels that currently the bill is not strong enough to, first of all, protect whistle-blowers. I give you the case of Theresa Vince, where her abuser was her manager, but also in the case of a hospital setting, very clearly, for the RNAO. Medical advisory committees are run by doctors. They're populated by doctors; nurses don't have a place on them. There is a kind of hierarchy in place that could be extremely detrimental to a whistle-blower, not to mention the civil litigation aspects of when a victim comes forward and might want to go after the hospital for reimbursement. So we want to protect the victim here; they want to protect the victim here. We just hope the government would want to protect the victim, and we don't see that happening.

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll proceed to the vote. Those in favour of NDP motion 20? Those opposed? I declare NDP motion 20 to have been defeated.

I'll now invite Ms. Jones to present PC motion 20.1.

Ms. Sylvia Jones: I move that part III.0.1 of the Occupational Health and Safety Act, as set out in section 3 of the bill, be amended by adding the following sections:

"Termination of employment

"32.0.8 An employer may terminate the employment of any of the employer's workers who are found guilty of an offence under part VII of the Criminal Code (Canada)

as a result of an act or an omission occurring in the workplace and resulting in the death of or bodily harm to a person.

"Restraining order

"32.0.9(1) On application, a court, including the Ontario Court of Justice, may make an interim or final restraining order against any person if the applicant is a worker who has suffered an act of workplace harassment or workplace violence or who has reasonable grounds to believe that he or she is likely to suffer such an act.

"Provisions of order

"(2) A restraining order made under subsection (1) shall be in the form specified by the rules of the court and may contain one or more of the following provisions, as the court considers appropriate:

"1. Restraining the respondent, in whole or in part, from directly or indirectly contacting or communicating

with the applicant in the workplace.

"2. Restraining the respondent from coming within a specified distance of the workplace."

The Chair (Mr. Shafiq Qaadri): And we invite you to read page 2.

Ms. Sylvia Jones: Oh, sorry.

"3. Specifying one or more exceptions to the provisions described in paragraphs 1 and 2.

"4. Any other provision that the court considers appropriate.

"Limitation on employer's liability for damages

"32.0.10 An employer of a worker is not liable for damages for any death of or bodily harm to a person resulting from an act or omission of the worker in the workplace if,

"(a) the employer has taken all reasonable steps to comply with the employer's duties under this act; or

"(b) the workplace is a public area or an area under the control of a person other than the employer."

The Chair (Mr. Shafiq Qaadri): Are there any further comments? Monsieur Lalonde.

Mr. Jean-Marc Lalonde: We will not support this motion. The issues of termination of employment, restraining orders and the limitation on an employer's liability for damages exceed the mandate of the Occupational Health and Safety Act, whose main purpose is the protection of workers' health and safety on the job.

The decision on termination of employment is a matter that employers should discuss with employment counsel.

The Chair (Mr. Shafiq Qaadri): Ms. DiNovo.

Ms. Cheri DiNovo: Unfortunately, I won't be able to support this either. A couple of concerns: One, that the ultra vires nature of some of this seems to have to do with restraining orders under the Criminal Code and therefore is out of the area of this provincial committee. Also, we would not want to put any limitation on the employer's liability, for obvious reasons. This bill is hoping to extend, if anything, their liability and their responsibility to look after their employees.

Also, the final thing, the termination of employment: I'm not really clear on that. Maybe the Progressive Conservative member might clarify, but it sounds almost

as if someone who has served their time—again, I think this might be ultra vires—could then be dismissed just because they have a record, even though they have already paid their debt to society. So again, concerns about that.

1550

The Chair (Mr. Shafiq Qaadri): Are there any further comments on this particular motion?

Seeing none, those in favour of PC motion 20.1? Those opposed? I declare PC motion 20.1 defeated.

Shall section 3, as amended, carry? Carried.

We'll proceed to section 4.

NDP motion 21: Ms. DiNovo.

Ms. Cheri DiNovo: I move that clause 43(3)(b.1) of the Occupational Health and Safety Act, as set out in subsection 4(2) of the bill, be struck out and the following substituted:

"(b.1) workplace violence or harassment is likely to endanger himself or herself or another worker; or."

This is essentially extending the right of refusal to workplace harassment; again, the right of an employee to get away from her harasser and the right of an employee to find safety from her harasser.

The Chair (Mr. Shafiq Qaadri): Mr. Dhillon, any further comments?

Mr. Vic Dhillon: Yes. The issue raised in this motion was addressed by motion 5, to amend the definition of workplace violence.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms. DiNovo?

Ms. Cheri DiNovo: I just wanted to raise the issue of Lori Dupont again, as certainly she's very present in the room today. Because the government has voted down our other amendments that would extend the definition of violence in the workplace, this particular amendment is critical to protecting someone like Lori Dupont. Under this bill as written, without this amendment she would not be protected; under this bill as written, without this amendment she would not have been able to refuse work. I just want to make that point very clearly.

The Chair (Mr. Shafiq Qaadri): Are there any further comments on NDP motion 21?

Seeing none, we'll proceed to the vote. Those in favour of NDP motion 21? Those opposed? NDP motion 21 is defeated.

NDP motion 22: Ms. DiNovo.

Ms. Cheri DiNovo: I move that clause 43(5)(a) of the Occupational Health and Safety Act, as set out in subsection 4(3) of the bill, be struck out and the following substituted:

"(a) in a safe place; and."

The way the act is, working not just "near" their workstation—it might be the instance where this person needs to get out of the area, far away from their workstation. It really is incumbent upon the government to make sure that this employee can get to a safe place wherever and whenever that safe place is. It can't be, of necessity, just someplace near to where they are. Again,

this came out of the inquest action group and is a particularly necessary amendment.

The Chair (Mr. Shafiq Qaadri): Any further comments? Mr. Dhillon.

Mr. Vic Dhillon: The existing provision in the Occupational Health and Safety Act requires a worker to remain in a safe place near his or her station until the required investigation is completed. Bill 168 recognizes that it may not always be appropriate for a worker to remain near his or her workstation if the hazard is workplace violence.

The Chair (Mr. Shafiq Qaadri): Further comments on NDP motion 22? Ms. DiNovo.

Ms. Cheri DiNovo: We're just asking the government to actually state that instead of stating that they recuse themselves to "near their workplace"; just a change of language that would strengthen it and make it clearer.

The Chair (Mr. Shafiq Qaadri): Thank you. No further comments?

Those in favour of NDP motion 22? Those opposed. Motion 22 is defeated.

NDP motion 23: Ms. DiNovo.

Ms. Cheri DiNovo: I move that subsection 43(10) of the Occupational Health and Safety Act, as set out in subsection 4(6) of the bill, be amended by striking out "a safe place that is as near as reasonably possible to his or her workstation" and substituting "a safe place."

Needless to say, this again makes the point that the language is not nearly safe enough, that an employer should not be able to request that an employee stay somewhere near the site of the abuser or the harasser. They need to be able to get to a safe place, whether that safe place is near their workstation or not.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. DiNovo. Further comments on NDP motion 23?

Mr. Vic Dhillon: Chair, this would be a consequential amendment related to the previous motion. Bill 168 recognizes that it may not always be appropriate for a worker to remain near his or her workstation if the hazard is workplace violence.

The Chair (Mr. Shafiq Qaadri): Ms. DiNovo.

Ms. Cheri DiNovo: I don't understand that explanation; I really don't. Why can't we change the language on this? Could someone from policy branch come forward and talk about why it can't be changed to "a safe place" from "a safe place that is as near as reasonably possible to his or her workstation"? What's the point of that?

Mr. Vic Dhillon: Chair, can we have about a minute or so?

The Chair (Mr. Shafiq Qaadri): Yes. You have a minute or so.

Ms. Kathleen Therriault: Hello. I'm Kathleen Therriault from the policy branch at MOL.

Currently, the Occupational Health and Safety Act says "that the worker shall remain at a safe place near his or workstation."

In recognition of the fact that it might not always be appropriate for a worker to remain near his or her work-

station, this bill was drafted to provide that a worker remain in a safe place as near as possible to his or her workstation.

The Chair (Mr. Shafiq Qaadri): Any further comments? Ms. DiNovo.

Ms. Cheri DiNovo: I still don't get it, and I don't think anybody listening gets it either. Clearly, the language isn't going to keep Lori Dupont or Theresa Vince safe. If they have to stay reasonably close to their workstation—again, we've got that wonderful word "reasonably"—in whose eyes? Hopefully, the intent of this law is to get the person to a safe place; not close to their workstation, but to a safe place.

Basically, what I'm hearing is just the same statement reiterated, over and over again, as if that's an explanation for the wording. It certainly isn't an explanation for the wording to the families of Lori Dupont or Theresa Vince, or to any of the deputants who came here. Simply saying it over and over again does not make it valid.

Anyway, I'll leave it at that. Obviously I'm outnumbered, obviously it will be voted down and obviously this is a very sad day for their families.

The Chair (Mr. Shafiq Qaadri): Are there any further comments before proceeding to vote on NDP motion 23?

Seeing none, those in favour of NDP motion 23? Those opposed? NDP motion 23 is defeated.

NDP motion 24.

Ms. Cheri DiNovo: I move that clause 43(10.1)(a) of the Occupational Health and Safety Act, as set out in subsection 4(6) of the bill, be amended by striking out "assigns the worker" at the beginning and substituting "in consultation with the coordinator, assigns the worker."

The Chair (Mr. Shafiq Qaadri): Comments?

Ms. Cheri DiNovo: This just ensures that the union or the joint health and safety committee also be involved in being able to support employees when it comes to these kinds of incidents, and of course that the Ministry of Labour be informed as well. It makes it a consultative process and again furthers the safety of the employee.

The Chair (Mr. Shafiq Qaadri): Mr. Dhillon.

Mr. Vic Dhillon: The bill already provides for regulation-making authority to prescribe the powers and duties of the coordinator in section 70(2), paragraph 50.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll proceed now to the vote.

Those in favour of NDP motion 24? Those opposed? NDP motion 24 is defeated.

1600

Shall section 4 carry? Carried.

We'll proceed now to section 5. NDP motion 25: Ms. DiNovo.

Ms. Cheri DiNovo: I move that section 5 of the bill be amended by adding the following subsection:

"(2) Section 52 of the act is amended by adding the following subsection:

"Notice of claim

"(4) If an employer is advised by or on behalf of a worker that the worker has a claim in the respect of

workplace harassment that has been filed with the Workplace Safety and Insurance Board by or on behalf of the worker, the employer shall give notice in writing within four days of being so advised to a director, to the joint health and safety committee or a health and safety representative and to the trade union, if any, containing such information and particulars as are prescribed."

This simply ensures that the union and the health and safety committee know and can follow up on behalf of the employee. It makes sense that her union or health and safety committee knows and can back her up and provide her with assistance. Again, that's a follow-up from the last amendment.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Dhillon?

Mr. Vic Dhillon: The requirement in this motion to notify a director of the Ministry of Labour of workplace harassment claims would not be consistent with the current notice requirement in the Occupational Health and Safety Act, which requires a Ministry of Labour inspector to be notified only if there's a fatality or critical injury.

Ms. Cheri DiNovo: May I say something? Again we hear the word "consistent." I guess what we were hoping, what the stakeholders were hoping and what the families of Theresa Vince and Lori Dupont were hoping with Bill 168 is that something new was brought into the Ontario Occupational Health and Safety Act. In a sense, the government constantly harkening back to consistent language mitigates the possible power of Bill 168. Again, sadly, instead of something different being added in, we're seeing the argument for something more of the same. Again, I just want to point out that more of the same isn't going to help women in the situation that Theresa and Lori found themselves in.

The Chair (Mr. Shafiq Qaadri): Any further comments for NDP motion 25?

Seeing none, we'll now proceed to the vote. Those in favour of NDP motion 25? Those opposed? Motion 25 is defeated.

Shall section 5 carry? Carried.

We'll proceed to section 6, government 26: Mr. Dhillon.

Mr. Vic Dhillon: I move that section 6 of the bill be amended by adding the following section to the act:

"Order for written assessment, etc.

"55.2 An inspector may in writing order that the following be in written form:

"1. The assessment of the risks of workplace violence required under subsection 32.0.3(1).

"2. A reassessment required under subsection 32.0.3(4)."

Our reason for this motion is that this amendment would provide the authority for inspectors to order that the assessment and reassessment of the risks of workplace violence be in writing. This is consistent with the approach taken with respect to workplace violence and workplace harassment policies in section 55.1.

The Chair (Mr. Shafiq Qaadri): Ms. DiNovo and then Ms. Jones.

Ms. Cheri DiNovo: Again, this harkens back to our original defeated amendments that dealt with the same issue of putting something in writing. Here's the weakest possible language: "An inspector may," instead of "An employer must." That's really the problem here. Possibly an inspector comes in, possibly an inspector does this; maybe they can. But really, this is and should be the requirement of an employer, that the employer let their employees know the assessments of the risks of workplace violence where they work and what their rights are. In a democracy, this should be open and transparent and should be part of the rights of an employee when they take on employment.

It's very convoluted. It's very weak. We're going to vote for it, but boy oh boy, it's a stretch. How sad that the original stronger amendments were voted down.

The Chair (Mr. Shafiq Qaadri): Thank you. Ms.

Ms. Sylvia Jones: Yes, I guess to follow up with what Ms. DiNovo referenced, in NDP motion 13—the motion was to have it in writing. So you vote that down, which says it has to be in writing, and now, with motion 27, we're talking about having the inspector ask for it. If that's what you were going to do, I don't know why you didn't just support motion 13.

The Chair (Mr. Shafiq Qaadri): Are there any

further comments?

Mr. Vic Dhillon: Chair, could we—that's fine. No more comments.

The Chair (Mr. Shafiq Qaadri): Thank you. We'll proceed, then, to the vote. Those in favour of government motion 26? Those opposed? Motion 26 is carried.

Shall section 6, as amended, carry? Carried.

We'll proceed now to section 7, government motion 27; Mr. Dhillon.

Mr. Vic Dhillon: I move that paragraph 33 of subsection 70(2) of the act, as set out in section 7 of the bill, be amended by striking out "the risk of workplace violence" and substituting "the risks of workplace violence."

This is a consequential amendment that would provide consistency with motion number 11 to refer to "the risks of workplace violence" rather than "the risk of workplace violence."

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Dhillon. Other comments? Ms. DiNovo.

Ms. Cheri DiNovo: So here we have the government saying that it's okay when it wants to pluralize a word—and then it's, I suppose, consistent with the act—but when the NDP wants to pluralize a behaviour, it's not consistent with the act and not necessary. I find that striking in its arrogance, but I guess arrogance is the hallmark of this regime.

We are going to vote for it. We just wish the government had voted for the plurality that would have strengthened the definition of workplace violence and harassment.

The Chair (Mr. Shafiq Qaadri): Any further comments?

Those in favour of government motion 27? Those opposed? Motion 27 carries.

NDP motion 28: Ms. DiNovo.

Ms. Cheri DiNovo: I move that paragraph 50 of subsection 70(2) of the Occupational Health and Safety Act, as set out in section 7 of the bill, be amended by striking out "requiring an employer to designate" at the beginning and substituting "requiring an employer, in conjunction with the joint health and safety committee, to designate."

In other words, we're just adding in that phrase to

make sure that it's consultative. That's it.

The Chair (Mr. Shafiq Qaadri): Further comments? Mr. Dhillon?

Mr. Vic Dhillon: Thank you, Chair. Regulation-making authorities currently in the Occupational Health and Safety Act do not specify a role for the joint health and safety committee.

Ms. Cheri DiNovo: That's exactly the point. We're suggesting that they do. We know what it doesn't do. We're suggesting that we add this language so that it does act in consultation with the joint health and safety committee. I don't really see that as explanation, but I gather that the government is going to vote this down, as it has all other amendments.

The Chair (Mr. Shafiq Qaadri): Are there any further comments?

Those in favour of NDP motion 28? Those opposed? Motion 28 is defeated.

Shall section 7, as amended, carry? Carried.

We'll proceed directly to the vote on section 8, as we have received no amendments so far. Shall section 8 carry? Carried.

We'll proceed now to NDP motion 29.

Ms. Cheri DiNovo: I move that the bill be amended by adding the following section:

"8.1 Subsection 35(1) of the Public Hospitals Act is repealed and the following substituted:

"Interprofessional advisory committee

"(1) Every board shall establish an interprofessional advisory committee composed of members who represent regulated health professionals involved in interprofessional practice in the hospital setting."

The Chair (Mr. Shafiq Qaadri): I need to intervene, with your indulgence, Ms. DiNovo, to inform you that the admissibility of this amendment is not in order. It proposes to amend a section of a current act that is not before the committee, and therefore I officially rule this motion out of order.

Ms. Cheri DiNovo: Can I say something to it?

The Chair (Mr. Shafiq Qaadri): Please.

Ms. Cheri DiNovo: Yes. We-

The Chair (Mr. Shafiq Qaadri): I'm sorry, Ms. DiNovo. I'm being—

Ms. Cheri DiNovo: We can't?

Interjection.

The Chair (Mr. Shafiq Qaadri): The powers that be are informing me that this cannot be debated.

Ms. Cheri DiNovo: Fair enough.

The Chair (Mr. Shafiq Qaadri): So we will proceed. I will essentially annul that, and we'll now move to section 9. We have received no amendments to date. We'll do a block vote on sections 9 and 10. Shall those sections carry? Carried.

Shall the title of the bill carry? Carried. Shall Bill 168, as amended, carry? Carried. **Ms. Cheri DiNovo:** Is there any discussion? *Interjection.*

Ms. Cheri DiNovo: Just by way of final word, and particularly to that amendment: We recognize in that, of course, the hierarchy of some workplaces being, in and of their nature, in a sense, bullying towards their female employees.

But I just wanted to say how sad I am that this was a chance for this government to pass a bill that really would have protected the futures of future Lori Duponts

and Theresa Vinces, and they have missed that opportunity.

We're going to vote for this bill because it's an inch where we needed a mile, but quite frankly, it's a sad day. It's a sad day because the requests of Lori Dupont's family, the requests of Theresa Vince's family, and the requests of the Ontario Federation of Labour, the RNAO and many others have been ignored.

So with that, see you later.

The Chair (Mr. Shafiq Qaadri): Thank you. Just two more issues on that: Shall Bill 168, as amended, carry? That has been taken as carried.

Shall I report the bill, as amended, to the House? Carried.

Having said that, the floor is still open for any final comments. Seeing none, the committee is adjourned.

The committee adjourned at 1607.







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